IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-347

CITY OF LOS ANGELES, CALIFORNIA,
DADE COUNTY, FLORIDA, and
JACKSONVILLE PORT AUTHORITY, FLORIDA,
Petitioners,

v.

NEIL E. GOLDSCHMIDT, Secretary
of Transportation, *et. al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit dated June 8, 1979. That judgment reversed a factfinding by the District Court that sufficient monies were available to the Federal Aviation Administration to order full relief from admittedly illegal FAA action against the 3 petitioner airport proprietors.

OPINIONS, FINDINGS OF FACT AND JUDGMENTS BELOW

This case has been to the Court of Appeals twice. The first opinions of the District Court below are reported as follows: *City of Los Angeles* v. *Adams,* 397 F. Supp. 547

(D.D.C. 1975), is printed as Appendix E to this petition; *Dade County* v. *Adams,* C.A. 75-1001 is unreported, and turned on the same ground as *City of Los Angeles; Jacksonville Port Authority* v. *Adams,* C.A. 75-1039 is unreported and was decided on jurisdictional grounds no longer germane to this case. The first appeals are reported and printed as follows: *City of Los Angeles* v. *Adams,* 181 U.S. App. D.C. 163, 556 F.2d 40 (1977) is printed as Appendix C to this petition; *Dade County* v. *Adams,* No. 76-1988 (May 19, 1977) is unreported and was affirmed on the authority of *City of Los Angeles; Jacksonville Port Authority* v. *Adams*, 181 U.S. Appp. D.C. 175, 556 F.2d 52 (1977), reversing on jurisdictional grounds, is printed as Appendix D to this petition.

These first appeals produced a holding that respondents (FAA)[1] had illegally denied to the 3 petitioners grants for airport improvements to which they were entitled as a matter of statutory right. The entitlements totaled $14.9 million.

All three cases were remanded to the District Court for proceedings, consistent with the Court of Appeals' disposition of *City of Los Angeles,* to determine whether money was available to pay petitioners' claims. The second District Court orders (with findings of fact and conclusions of law) are unreported and are printed as Appendix B to this petition. The District Court held that under the statute and facts of record petitioners were entitled to their

[1]Respondents are the Secretary of Transportation and the Administrator of the Federal Aviation Administration, who administer grants for airport safety and development; and the Secretary of the Treasury, who maintains the trust fund from which the grants are financed.

full enplanement claims. The judgment of the Court of Appeals in the second, consolidated, appeals of the three cases is unreported, and is printed as Appendix A to this petition.

The disposition of FAA's second appeal — the judgment of which review is sought here — was to deny to the petitioners the full $14.9 million of which FAA had wrongfully deprived them, to ignore the findings of fact in petitioners' favor and to allow FAA to continue its unprecedented claim to discretion in the granting of the statutory entitlements.

JURISDICTION

The judgment of the Court of Appeals was entered June 8, 1979, and this petition is filed within 90 days of that date. This Court has jurisdiction under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether a Court of Appeals may summarily reverse the findings of fact of a District Court on remand where the Court of Appeals assigns no error at all to the findings.

2. Whether the District Court below erred in finding that a $4.2 billion trust fund created for the benefit of airport sponsors, as authorized and appropriated by Congress, retained sufficient monies to fund fully the statutory entitlements of the three airport sponsors, petitioners here, which the Court of Appeals had held were wrongfully denied.

STATUTORY PROVISIONS INVOLVED

The Airport and Airway Development Act of 1970, as amended, is codified at 49 U.S.C. § 1701 *et seq.* (1970 and Supp. V 1975). The specific provisions of that statute relevant here are:

> §*1714(a):* In order to bring about, in conformity with the national airport system plan, the establishment of a nationwide system of public airports adequate to meet the present and future needs of civil aeronautics, the Secretary is authorized to make grants for airport development by grant agreements with sponsors in aggregate amounts not less than the following:
>
> (1) For the purpose of developing in the several States, the Commonweatlh of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, airports served by air carriers certificated by the Civil Aeronautics Board, and airports the primary purpose of which is to serve general aviation and to relieve congestion at airports having a high density of traffic serving other segments of aviation, $250,000,000 for each of the fiscal years 1971 through 1973, and $275,000,000 for each of the fiscal years 1974 and 1975.
>
> * * *
>
> §*1714(b)(1):* To facilitate orderly long-term planning by sponsors, the Secretary is authorized, effective on May 21, 1970, to incur obligations to make grants for airport development from funds made available under this subchapter for the fiscal year ending June 30, 1971, and the succeeding four fiscal years in a total amount not

> to exceed $1,460,000,000. No obligation shall be incurred under this paragraph for a period of more than three fiscal years and no such obligation shall be incurred after June 30, 1975. The Secretary shall not incur more than one obligation under this paragraph with respect to any single project for airport development. Obligtions incurred under this paragraph shall not be liquidated in an aggregate amount exceeding $280,000,000 prior to June 30, 1971, an aggregate amount exceeding $560,000,000 prior to June 30, 1972, an aggregate amount exceeding $840,000,000 prior to June 30, 1973, an aggregate amount exceeding $1,150,000,000 prior to June 30, 1974, an aggregate amount exceeding $1,460,000,000 prior to June 30, 1975.
>
> §*1715(a)(1):* As soon as possible after July 1 of each fiscal year for which any amount is authorized to be obligated for the purposes of paragraph (1) of section 1714(a) of this title, the amount made available for that year shall be apportioned by the Secretary as follows:
>
> * * *
>
> B) One-third to be distributed to sponsors of airports served by air carriers certificated by the Civil Aeronautics Board in the same ratio as the number of passengers enplaned at each airport of the sponsor bears to the total number of passengers enplaned at all such airports.
>
> §*1715(a)(3):* *** Each amount apportioned to a sponsor of an airport under paragraph (1)(B) of this subsection shall, during the fiscal year for which it was first authorized to be obligated and the two fiscal years immediately following, be

available only for approved airport development projects located at airports sponsored by it. Any amount apportioned as described in this paragraph which has not been obligated by grant agreement at the expiration of the period of time for which it was so apportioned shall be added to the discretionary fund established by subsection (b) of this section.

STATEMENT OF THE CASE

Petitioners' Statutory Entitlement

Congress in 1970 created an airport development trust fund from taxes on travellers and suppliers.[2] The taxes increased with aircraft operations; they thus were generated by the efforts of airport proprietors to improve their facilities. The trust fund has a current balance of $4.2 billion.[3]

At the same time in 1970, Congress created a five-year program of using the trust to fund further airport improvements consistent with FAA's airport system plan.[4] Through June 30, 1975, $1.46 billion was authorized to be spent according to a formula which guaranteed — as the Court of Appeals held in the first appeal in these cases — one-third of the returned funds to airports in the proportion they had enplaned passengers (enplanement entitlement).[5] The goal of the multi-year authorization was to facilitate long-range planning by airports; toward that end, proprietors had three years to ask for each year's enplanement entitlement, except that no grant could be

[2]49 U.S.C. § 1742.

[3]Airport and Airway Trust Fund Eighth Annual Report, (to) House Comm. on Ways and Means, 96th Cong. 1st Sess. 8 (Comm. Print 1979).

[4]49 U.S.C. § 1714.

[5]49 U.S.C. § 1715(a)(1)(B).

made after June 30, 1975.[6] This, plus the requirements that airport proprietors match federal grant funds and have FAA approve their improvement projects,[7] created a program where, from the very beginning, more monies had been apportioned to some airport proprietors than they were willing or able to claim in grants.

Illegal FAA Aggrandizement of Power Under Diminished Appropriations

Congress annually appropriated for airport grants less than had been authorized in advance by the 1970 grant act.[8] The facts developed during the liability phase of these cases[9] indicated that FAA had maladministered[10] the airport grant program throughout the five years before June 30, 1975.

The apologia of FAA, rejected by both Courts below, was that they had "discretion" to distribute the available appropriated monies entirely as they pleased, without reference to the enplanement entitlement.

As applied in this case, that "discretionary" administration denied the 3 petitioners the entire amount of their enplanement entitlement authorized for 1975.

[6]49 U.S.C. § 1714(b).

[7]49 U.S.C. §§ 1716-1722.

[8]P.L. 93-391, § 302, 88 Stat. 780 (1974); P.L. 93-98, § 302, 87 Stat. 329 (1973); P.L. 92-398, § 302, 86 Stat. 580 (1972); P.L. 92-74, § 303, 85 Stat. 201 (1971).

[9]The District Court below based its jurisdiction on 28 U.S.C.§ 1331(a).

[10]The details of the operation of FAA's so-called "priority system", under which it abrogated the statutory formula *in toto*, were described by the Court of Appeals at 181 U.S. App. D.C. 166,173, 556 F.2d 43,50, pp. 31a-32a, 46a-47a *infra*.

The Court of Appeals held in the first appeal that FAA should have administered the discrepancy between authorization and appropriation so as to preserve to the maximum extent possible the enplanement entitlement.[11] The Court of Appeals remanded for factfinding on the extent to which this was possible.

Remand to Accommodate Petitioners' Statutory Entitlement to Amounts Appropriated

In commissioning this factfinding, the Court of Appeals professed to lack sufficient facts itself to determine whether it would have been possible to administer the grant program in 1974-75 in order to make these petitioners whole. Cognizant of the discrepancy between entitlement and authorization, on the one hand, and appropriation, on the other, the Court of Appeals ordered a determination of what "pro-rata reduction" all enplanement-entitled sponsors should have suffered in 1974 -75. Although writing in 1977, the Court of Appeals professed ignorance of how many of the entitled sponsors other than petitioners had valid and fundable airport projects in 1974-75 against which they desired to apply their (reduced) entitlements.

The remanding clause therefore hypothesized a lawful administration by FAA during 1974 -75. The ultimate finding was to be whether the FAA could have devoted $14.9 million of the monies appropriated to make the 3 petitioners whole according to their statutory entitlement.

Factfinding On Remand

The District Court found that FAA had the funds to do this, and thereby could have given maximum fidelity to the

[11]181 U.S. App. D.C. at 173-74, 556 F.2d at 50-51, pp. 46a-47a *infra*.

statutory enplanement entitlement. The court relied in part on the record in the proceedings leading to the first appeal; these proceedings closed 2 working days before the end of fiscal year 1975.[12]

Although given full opportunity on remand to do so, FAA neither named nor proved one airport sponsor who would have been denied entitlement funding of a submitted airport project under the District Court's remedy.

The remand order necessarily required the District Court to make the following computations. First, the Court had to determine the amount at the first day of the final year of the program (fiscal year 1975: July 1, 1974 to June 30, 1975) by which airport proprietors had wrongfully been denied their enplanement entitlements. Second, the District Court had to add the amount of new enplanement entitlement authorization accruing first in fiscal year 1975.[13] Third, the Court had to apply to these statutory entitlements the amount actually appropriated for use during fiscal year 1975.

The District Court found that by July 1, 1974, $193.7 million more had been authorized than had been appropriated for the enplanement and all other grant accounts. Since the new authorization for fiscal year 1975, and the appropriation for fiscal 1975 were both $310 million, the same amount, $193.7 million, would remain authorized but unappropriated on June 30, 1975. The District Court found that maximum effect could be given

[12]The FAA in no way indicated to the District Court on remand that these facts were unreliable. The FAA made no factual showing to the District Court on remand at all.

[13]Because enplanement entitlements were available for 3 years, FAA would have been able on June 30, 1975 to remedy 3 years of illegal administration against any claimant proprietor. 49 U.S.C. § 1715(a)(3).

to the enplanement entitlement by letting no more than one-third of this lapsing $193.7 million be enplanement funds.[14] Since for five years, FAA had underspent enplanement monies and relatively overspent from other accounts,[15] this remedy required a relative overspending during 1974 -75 for the benefit of the enplanement entitled sponsors.

In its second opinion, the Court of Appeals intimated that this method would have been a lawful administration of the act if FAA had undertaken it itself during 1974 -75.[16]

Since its analysis was the hypothesis of a year of lawful administration, the District Court then evaluated the facts of record — which consisted almost entirely of FAA's own figures — to determine whether any meritorious sponsor would have been disadvantaged by applying this method to fund the $14.9 million enplanement entitlement illegally denied the 3 petitioners. These facts were actual, not hypothetical, being applications by airports for grants during 1974-75.[17] The District Court found that no other sponsor would have been disadvantaged, and ordered full relief.

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[14]Pp. 9a-10a *infra*.

[15]The effect was to give limited appropriated monies to smaller, general aviation airports, rather than to commercial airports, whose safety improvements were to be guaranteed by the enplanement entitlement. 49 U.S.C. § 1715(a)(1)(B).

[16]Page 4a *infra*.

[17]At the same time, airport proprietors which were illegally denied enplanement entitlements were not situated similarly to the three petitioners. Only the 3 had preserved their right to Court-ordered relief after June 30, 1975 by filing these cases before June 30. The Court of Appeals so held in *Jacksonville*. 181 U.S. App. D.C. 175, 178; 556 F.2d 52, 55, p. 54a *infra*.

Appeal of Remedial Factfinding

The FAA took a second appeal, challenging the finding of the District Court that it would have been possible to fund fully the entitlements of all enplanement sponsors actually submitting approved projects.

The FAA did not assert any error in the factfinding itself. Rather, FAA exercised its "discretion"[18] in this remedy proceeding to calculate a 25% reduction in the enplanement entitlement of the 3 petitioners.[19]

Indeed, FAA disclaimed any application of its calculation to airports other than petitioners even during 1974 -75.[20]

The Court of Appeals in the second appeal reversed, holding that when it remanded for a factfinding what pro-rata reduction was appropriate, some reduction was required. That is, the Court of Appeals rejected the proposition that the facts (including activity of other airports) might be found on remand to indicate that the reduction would and should be zero.

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[18]Affidavit of Foster ¶ 19 (Jun. 7, 1977) (J.A. p. 61 in the Court of Appeals below).

[19]The essence of FAA's calculation was to consider only maladministration by FAA in fiscal years 1973 and 1974 (rather than from 1970) in computing the allocation of the $310,000,000 for a lawful administration during 1974-75. This "remedy" would leave the enplanement account bearing some $7,000,000 more of the appropriations shortfall than did the division by thirds ordered by the District Court, p. 10a *infra*.

[20]Affivadit of Foster, *supra*, ¶ 15 (J.A. pp. 60-61 in the Court of Appeals below).

At the same time, FAA did not controvert the facts adduced by petitioners regarding the practicability of funding petitioners' claims without detriment to any other eligible grant applicant. P. 10a *infra*.

The Court of Appeals assigned no error to the evaluation by the District Court of the facts of which the Court of Appeals, in remanding, had professed ignorance. The Court of Appeals lauded the approach of the District Court, but reversed, on the sole ground that it was "inconnsistent with the terms of our remand, which clearly contemplated determination of a 'pro-rata reduction.'"[21]

REASON FOR GRANTING THE WRIT

Although this case arises under a federal statute mandating return to the airport proprietors of monies that they themselves generated by their enplanement operations, this case does not involve merely a construction of the program statute to canalize the discretion of the administrators within the entitlement established by Congress.[22] That was done in the first appeal of this case in the

[21]The only substantive criticism of the District Court's factual analysis on remand was a footnote in which the Court of Appeals asserted that any failure of airport proprietors other than the 3 petitioners to claim their enplanement entitlements before June 30, 1975 would be suspended for two years. This assertion conflicts with the provisions of 49 U.S.C. § 1714(b), as analyzed by the Court of Appeals in the first appeal (181 U.S. App. D.C. at 169, 556 F.2d at 46, pp. 37a-38a *infra*), that the two-year carryover provision of 49 U.S.C. § 1715(a)(3) would not operate after June 30, 1975.

[22]These cases are similar to, but even more clear-cut than, *Morton* v. *Ruiz*, 415 U.S. 199 (1974), where Bureau of Indian Affairs officials were held to have unlawfully denied benefits to certain Indians living off reservations in the face of authorizing legislation and appropriations acts admitting of no such absolute geographical restrictions. There was in that case at least some legitimate question about the parameters of the entitled class of beneficiaries.

Even the more clear-cut aspect is a recurring one, however. In *Mission Band of Rincon Indians* v. *Califano*, 464 F. Supp. 934, 936 (N.D. Cal. 1979), a District Court has recently held invalid an administrator's denial of entitlement to health care services on the basis of putatively limited appropriations.

District of Columbia Circuit.[23]

Rather, this case presents an opportunity for the exercise of this Court's supervisory jurisdiction to ensure that illegal agency action is cured by the fullest remedy possible — the remedy most faithful to Congress' direction — on the facts found by the trial court.

The limitation through the appropriation process of authorizations is not uncommon; in other cases, as in the first appeal here, the Court of Appeals below has been quick to curtail an excessive arrogation of discretion by the agency.[24] The unfortunate result in this case — one capable of repetition in later airport programs as well as in other grant programs — is that the Court of Appeals remanded to the District Court for factfinding and then paid to that factfinding not insufficient deference, but no deference at all. As a result, an arrogation of discretion in FAA to determine the proper remedy for its illegal action, remains essentially unreviewed. This is so because of an intrajudicial dispute whether a remand for *whatever* "pro-rata reduction" the facts compelled, dictated a finding of fact compelling *some* (any) reduction.

The remanding clause in the disposition of the first appeal preserved to the District Court the proper factfinding role. The District Court performed its role with findings which were not impeached by either the FAA or the Court

[23]The net effect of the District Court's remand decision was to restore the airport grant program to proper balance under the allocation formula, a remedial measure countenanced in principle by the Court of Appeals in *National Association of Neighborhood Health Centers, Inc.* v. *Mathews*, 179 U.S. App. D.C. 135, 152-53, 551 F.2d 321, 338-39 (1976). The Court of Appeals there commanded the extreme measure which the District Court here found to be unnecessary to the provision of full relief.

[24]*Train* v. *City of New York*, 420 U.S. 35 (1975).

of Appeals. No reasoned basis is presented on the record of this case for preserving to FAA a second opportunity for "discretion".

The Court of Appeals' only basis for disapproval of the findings (apart from the arbitration-like idea that petitioners should be content with having received part of the amount claimed and guaranteed by the enplanement formula)[25] was that its remand had contemplated that some reduction might be required. But as the Court freely acknowledged[26] that decision was not one founded upon a sufficiently complete factual record. The Court did not in 1977 even know the total amount actually obligated by

[25]See p. 4a *infra*.

[26]The Court of Appeals' concern that the remedy approved by the District Court would reward petitioners at the expense of other sponsors affected by FAA's priority system was factually unfounded (Statement, p. 12 *supra*), and also raises the question whether a rule of strict equality of relief to each member of a putative class sometimes invoked in employment discrimination cases is properly applicable in litigation challenging maladministration of statutory programs creating entitlements to grants. *Rodriguez* v. *East Texas Motor Freight*, 505 F.2d 40, 64 (5th Cir. 1974), *vacated on other grounds*, 431 U.S. 395 (1977). Cf. *Thornton* v. *East Texas Motor Freight*, 497 F.2d 416, 420-22 (6th Cir. 1974) (District Court discretion to limit backpay and seniority relief to class members who had filed complaints or otherwise protested illegal practice); *Women's Committee For Equal Employment Opportunity* v. *National Broadcasting Co.*, 76 F.R.D. 173, 181 (S.D.N.Y. 1977) (Approval of class action settlement giving increased award to certain class members most active in litigation, where no other members chose to appear or to object to such award); *Bryan* v. *Pittsburgh Plate Glass Co.*, 59 F.R.D. 616, 617 (W.D.Pa. 1973) (same).

FAA in Fiscal 1975[27] or the backlog left at the end of that year[28] much less how those obligations and backlog were divided among the Act's funding categories.

The District Court's factfinding is entitled to the same deference given the factfinding of the District Court in *Dothard* v. *Rawlinson*, 433 U.S. 321, 331, 338, where the question was similar: whether enough women were affected by Alabama's height and weight requirements for prison guards that a case of sex discrimination could be made out. That District Court's affirmative answer was appropriately affirmed by this Court. See also *Mayor* v. *Educational Equality League*, 415 U.S. 605, 618 (1974) (Court of Appeals reversed for unwarranted disregard of District Court factfinding); *McAllister* v. *United States*, 348 U.S. 19, 20-21, 23 (1954) (same); *Graver Tank & Mfg. Co.* v. *Linde Air Prod. Co.*, 336 U.S. 271, 275, 277-79 (1949) (same).

CONCLUSION

The principle enunciated by the Court of Appeals in its second decision allowing FAA a second opportunity to exercise discretion denied it by statute is a broad one affecting all such congressional mandates and should not be allowed to stand unreviewed.

The large sums airport sponsors must spend of their own money to make the nation's airports safe and efficient depends upon the certain availability of the federal "contribution" derived under the statutory scheme by federal taxes on airport users. The Court of Appeals' decision gives FAA undue license to tamper with the enplanement

[27]P. 48a. *infra*.

[28]P. 38a n.6 *infra*.

formula — Congress' means of providing that certainty. The purpose of the airport program was to tax users to improve airports, not to pile up $4.2 billion in the Federal Treasury for FAA to play with for other purposes.

A writ of certiorari should issue to the Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1978

No. 77-2126

Jacksonville Port Authority, a body politic and corporate of the State of Florida — Civil Action No. 75-1039

v.

Brock Adams, as Secretary of Transportation of the United States, et al.,
Appellants

No. 77-2127

City of Los Angeles, a municipal corporation — Civil Action No. 75-0679

v.

Brock Adams, as Secretary of Transportation of the United States, et al.,
Appellants

No. 77-2128

Dade County, Florida, a political subdivision of the State of Florida — Civil Action No. 75-1001

v.

Brock Adams, as Secretary of Transportation of the United States, et al.,
Appellants

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Filed Jun 8, 1979

BEFORE: WRIGHT, Chief Judge, and TAMM and LEVENTHAL, Circuit Judges

JUDGMENT

These causes came on to be heard on the records on appeal from the United States District Court for the District of Columbia, and were argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the Court. *See* Local Rule 13(c). On consideration of the foregoing, it is

ORDERED AND ADJUDGED, by this Court, that these cases are hereby remanded to the District Court with instructions to enter judgment for the defendants, in accordance with the attached memorandum.

Per Curiam

For the Court:

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

Nos. 77-2126, etc. —
Jacksonville Port Authority v. Adams
(Before Chief Judge Wright, Circuit Judges Tamm and Leventhal)

MEMORANDUM

Plaintiffs brought these actions to obtain amounts due them under the "enplanement" formula for allocating airport development funds under section 15(a)(1)(B) of the Airport and Airway Development Act of 1970, 49 U.S.C. § 1715(a)(1)(B). The difficulty arose from a congressional choice not to appropriate the full amounts authorized under the Act. In *City of Los Angeles v. Adams,* 181 U.S.App.D.C. 163, 556 F.2d 40 (1977), we held that the Federal Aviation Administration (FAA) had acted impermissibly in using the conflict between the two statutory mandates as to total amounts as a basis for asserting discretion to disburse enplanement funds without regard to Congress's demarcation in the § 15(a) formula. We held that FAA was required to allocate the money appropriated so as to preserve as much as possible the allocation formula, necessitating a pro rata reduction of the amounts to which each airport sponsor was entitled. We remanded to the district court to determine "the method of pro rata reduction the FAA should have used in granting enplanement funds up to the limits set by the appropriations act for FY 1975." *Id.* at 174, 556 F.2d at 51.

At the remand proceedings, FAA presented a formula that would have reduced each sponsor's entitlement by 25.5 per cent. The airport sponsors, however, continued to seek the full amounts allocated to them under the authorization provisions. The District Court concluded that because FAA had spent approximately $18 million less in enplanement funds in FY 1975 than it should have, plaintiffs could properly be awarded the full amounts of their claims, which totalled approximately $15 million.

We cannot say whether the District Court's approach would have been an appropriate one had it been adopted in the first instance. But we find it inconsistent with the terms of our remand, which clearly contemplated determination of a "pro rata reduction." The FAA formula, while not the only one that could be conceived, represents a fair allocation in accordance with our instructions on remand. It has the advantage that airport sponsors may learn their entitlement at the beginning of the relevant fiscal year, where the District Court's formula means that allocations would not be known until the end – or near the end – of the fiscal year. There are other difficulties with the District Court formula.* Undistributed enplanement funds do not revert to the general treasury, but rather remain in the Airport and Airway Development Trust Fund, where they will be available for aviation-related purposes at Congress's direction.

Subsequent to our prior opinion the government paid to appellants approximately $11 million of the $15 million they claimed. Their lawsuit, in its first phase, was thus highly successful. Their effort to obtain the remaining $4 million is not in accordance with the approach we envisioned when we provided for the major part of their claim. The case is remanded to the District Court with instructions to enter judgment in favor of defendants, each party to bear its own share of the costs.

So ordered.

*The District Court's approach seems to rest on the assumption that because, say, the city of Chicago has not applied for its enplanement funds during the year, it has waived or in any event lost its entitlement, and the funds therefore should be put in a pot for the benefit of Los Angeles and its co-plaintiffs. But Congress has provided that entitlements, though not drawn down, remain open to be drawn down in two succeding years.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITY OF LOS ANGELES, CALIFORNIA,
a political subdivision of the
State of California,
Plaintiff,
v. Civil Action
HON. BROCK ADAMS, Secretary of No. 75-0679
Transportation, et al.,
Defendants.

Filed Sep. 16, 1977

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

This case is before this Court on remand from the United States Court of Appeals for the District of Columbia Circuit. The Court of Appeals directed this Court to determine the appropriate amount to be awarded to Plaintiff. *City of Los Angeles v. Adams,* U.S.C.A. No. 75-1965, March 30, 1977, Slip Op. at 22. Plaintiff claims that under the principles articulated in the Court of Appeals' decision, it is entitled to an award of $9,585,000, as prayed in its Complaint filed in this Court on May 1, 1975.

This Court, having considered the Memoranda filed by Plaintiff and Defendants, and having heard oral argument by the parties, hereby enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Plaintiff City of Los Angeles is a municipal corporation, duly organized and existing under and by virtue

of the laws of the State of California. Plaintiff, through its Board of Airport Commissioners owns and operates Los Angeles International Airport.

2. Defendants are Federal officials charged with the administration of the Airport and Airway Development Act of 1970 (Act), 49 U.S.C. §1701 *et seq.*
3. The Act (Section 1714) provided for a total of $1.46 billion over fiscal years 1971 through 1975 for grants to sponsors of airports served by air carriers certificated by the Civil Aeronautics Board, and to sponsors of airports serving general aviation.
4. The Act (Section 1715) required that one-third of the funds authorized for grants to certificated carrier airports be apportioned to each such airport in the ratio that the number of passengers enplaned at such airport bore to the total number of passengers enplaned at all such airports. [Enplanement formula]. The Act required that one-third of the funds be apportioned to the States and Territories according to their area and population. The Act committed the apportionment of one-third of the funds to the discretion of Defendants. Sums apportioned to an airport sponsor under the enplanement formula were to remain available for obligation only to that sponsor for a total of three fiscal years.
5. Plaintiff City of Los Angeles was apportioned $5,694,242 for Fiscal 1974 and $5,337,242 for Fiscal 1975 under the enplanement formula. Plaintiff received a grant of $949,930 in Fiscal 1974 and a grant of $536,463 in Fiscal 1975. The unobligated balance of Plaintiff's enplanement entitlement is $9,585,000.
6. At the end of Fiscal 1974, $503.7 million of the $1.46 billion authorized by the Act remained unobligated.
7. Section 302 of the Department of Transportation Appropriations Act for Fiscal 1975 read:

> "None of the funds provided in this Act shall be available for administrative expenses in

> connection with commitments for grants-in-aid for airport development aggregating more than $310,000,000 in Fiscal Year 1975." Pub. L. 93-391, §302 (1974).

8. Defendants interpreted this appropriations provision to prohibit the obligation in Fiscal 1975 of $193.7 million of the remaining $503.7 million authorized by the Act, and therefore Defendants did not obligate that amount.
9. Defendants instituted a "priority system" to choose which airport development projects to fund, and did not adhere to the distribution formula of the Act.
10. Of the $193.7 million which Defendants did not obligate in Fiscal 1975, $82.8 million were monies apportioned under the Act to enplanement sponsors, $29.4 million were monies apportioned under the Act to States and territories, and $81.5 million were monies apportioned under the Act to be distributed at Defendants' discretion.
11. Plaintiff City of Los Angeles applied for a grant in Fiscal 1975 to utilize the $9,585,000 unobligated balance of monies apportioned to it under the enplanement formula. Plaintiff's application was for an airport improvement project eligible for funding under the Act, and Plaintiff's application was in all respects in compliance with Defendants' regulations. Plaintiff's application was denied solely because Defendants deemed it to be of insufficient priority under their priority system.

CONCLUSIONS OF LAW

1. On March 30, 1977, the United States Court of Appeals for the District of Columbia Circuit decided the appeal from this Court's judgment. The Court of Appeals affirmed this Court's decision that the Federal Aviation Administration's (FAA) "priority system" for rating airport sponsors' proposed project

for rating airport sponsors' proposed projects unlawfully abrogated the sponsors' entitlements under the enplanement formula of the Airport and Airway Development Act of 1970, 49 U.S.C. §1715(a)(1)(B). *City of Los Angeles v. Adams,* U.S.C.A. No. 75-1965, March 30, 1977, Slip Op. at 2, 18-20.

2. The Court of Appeals reasoned that Congress did intend that a provision in FAA's annual appropriations act would operate to restrict the amount that the agency could obligate each year, notwithstanding the higher obligational levels specified in the authorizing statute. The Court of Appeals held, however, that the appropriations provision gave FAA no license to revise the authorizing statute's formula for distribution of the monies. The Court stated:

> "When Congress modifies a statute by an appropriations measure, or any other amendment, the agency administering the statute is required to effectuate the original statutory scheme as much as possible, within the limits of the added constraint. . . *We hold that FAA was required to distribute the money available so as to preserve the allocation formula provided by §1715(a)* . . .
>
> *"This results, in our view, in a construction whereby the overall amount of the appropriations measure is allocated, pro rata, in accordance with the formula of the Act." Los Angeles* Slip Op. at 19-20. (emphasis added)

3. Thus, the fundamental premise of the Court of Appeals' decision is that FAA should have employed in Fiscal 1975 a method of exercising the obligational authority available to it which would have ensured that the "shortfall" caused by the appropriations act would fall equally upon the enplanement sponsors' account established pursuant to Section 1715(a)(1(B),

the States' account established pursuant to Section 1715(a)(1)(A), and the FAA's discretionary account under Section 1715(a)(1)(C).

4. The sole purpose of this remand litigation is to determine how much Los Angeles should receive under the spending scheme FAA should have devised for Fiscal 1975. *Los Angeles* Slip Op. at 22. The entirety of Los Angeles' claim, $9,585,000, was available for obligation to Los Angeles in Fiscal 1975 pursuant to 49 U.S.C. §1715(a)(1)(B) and 1715(a)(3), and is still available pursuant to this Court's Orders of May 2, 1975 (temporary restraining order), May 14, 1975 (preliminary injunction), and June 26, 1975 (judgment on the merits).
5. The question remanded for this Court's determination is not a complicated one and does not require the application of any expert's specialized knowledge. An examination of FAA's own numbers provides a sufficient basis for an Order awarding to Los Angeles the full amount prayed in its Complaint.
6. When P.L. 93-391, #302 was passed on August 28, 1974, it cut off $193.7 million of the $503.7 million obligational authority FAA could otherwise have exercised during Fiscal 1975. Thus, FAA had $310 million to satisfy unobligated balances as of that date consisting of $160.3 million in enplanement sponsors' accounts, $171.1 million in States' accounts, and $172.3 million in FAA's discretionary account. (Defendants' Trial Brief, *City of Los Angeles v. Adams,* Civil Action No. 75-0679, filed June 2, 1975, at 8.)
7. The Court of Appeals decision holds (*Los Angeles* Slip Op. at 18) that FAA could have and should have adhered to both the appropriations act and the Airport Act's distributional formula. FAA should have spent monies in Fiscal 1975 in such a way that $64.567 million would have remained in each account at the end of Fiscal 1975. To accomplish this, FAA should

have spent in Fiscal 1975 $95.733 million in enplanement funds, $106.533 million in State funds and $107.733 million in discretionary funds.

8. Instead, however, FAA spent only $77.5 million in enplanement funds in 1975. FAA spent $141.7 million in State funds and $90.8 million in discretionary funds. (Defendants' Trial Brief, *City of Los Angeles v. Adams, supra,* filed June 2, 1975, at 2.) In short, FAA spent $18.233 million less in enplanement funds in Fiscal 1975 than it ought to have spent under the principles articulated in the Court of Appeals' opinion.
9. This Court can most fully give effect to Congress' intent in the Act's Section 1715(a), even as modified by the appropriations provisions, by ordering FAA to make a grant for the full entitlement claimed by Los Angeles. Such an order will better give effect to Congress' intent than the Order proposed by Defendants, which would reduce the award to Plaintiff by some $2.6 million and which would leave unrectified to that extent FAA's violation of the Act's distribution formula. Los Angeles' claim of $9,585,000 is well within the more than $18 million in enplanement funds which FAA ought to have obligated, but did not obligate during Fiscal 1975.
10. Because prior to the close of Fiscal 1975 this Court entered its temporary restraining order and judgment on the merits embodying a conditional obligation of Los Angeles' entitlement, the final order entered here will in no way affect grants entered into or monies paid by FAA in Fiscal 1975 to non-litigant airport sponsors.

Now it is therefore ORDERED that Defendants enter into an obligation to pay Plaintiff the amount of $9,585,000, which is the balance of Plaintiff's enplanement entitlement computed according to 49 U.S.C. §§1715(a)(1)(B) and 1715(a)(3).

ENTERED: September 16th, 1977

/s/ Barrington D. Parker
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITY OF LOS ANGELES, CALIFORNIA, Plaintiff,	:	
v.	:	Civil Action No. 75-0679
HON. BROCK ADAMS, et al., Defendants.	:	

Filed Sep. 16, 1977

ORDER

This case is before this Court on remand from the United States Court of Appeals for the District of Columbia Circuit. The Court of Appeals directed this Court to determine the appropriate amount to be awarded to plaintiff.

This Court has considered the memoranda and the oral argument of counsel and has entered findings of fact and conclusions of law. Accordingly, it is this 16th day of September, 1977,

ORDERED that defendants enter into an obligation to pay plaintiff the amount of $9,585,000, which is the balance of plaintiff's enplanement entitlement computed according to 49 U.S.C. §§1715(a)(1)(B) and 1715(a)(3). 1715(a)(3).

/s/ Barrington D. Parker
Barrington D. Parker
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DADE COUNTY, FLORIDA, a political subdivision of the State of Florida, *Plaintiff,*	:	
v.	:	
HON. BROCK ADAMS, Secretary of of Transportation, et al. *Defendants.*	:	Civil Action No. 75-1001

Filed Sep. 16, 1977

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This case is before this Court on remand from the United States Court of Appeals for the District of Columbia Circuit. The Court of Appeals directed this Court to determine the appropriate amount to be awarded to Plaintiff. *Dade County v. Adams,* U.S.C.A. No. 76-1988, order dated May 18, 1977; *City of Los Angeles v. Adams,* U.S.C.A. No. 75-1965, March 30, 1977, Slip Op. at 22. Plaintiff claims that under the principles articulated in the Court of Appeals' decision, it is entitled to an award of $5,024,782, as prayed in its Complaint filed in this Court on June 23, 1975.

This Court, having considered the memoranda filed by Plaintiff and Defendants, and having heard oral argument by the parties, hereby enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Plaintiff Dade County is a metropolitan county government organized under the Constitution of the

State of Florida, Plaintiff, through the Dade County Aviation Department, owns and operates Miami International Airport.

2. Defendants are Federal officials charged with the administration of the Airport and Airway Development Act of 1970 (Act), 49 U.S.C. §1701 *et seq.*
3. The Act (Section 1714) provided for a total of $1.46 billion over fiscal years 1971 through 1975 for grants to sponsors of airports served by air carriers certificated by the Civil Aeronautics Board, and to sponsors of airports serving general aviation.
4. The Act (Section 1715) required that one-third of the funds authorized for grants to certificated carrier airports be apportioned to each such airport in the ratio that the number of passengers enplaned at such airport bears to the total number of passengers enplaned at all such airports. [Enplanement formula]. The Act required that one-third of the funds be apportioned to the States and Territories according to their area and population. The Act committed the apportionment of one-third of the funds to the discretion of Defendants. Sums apportioned to an airport sponsor under the enplanement formula were to remain available only for obligation to that sponsor for a total of three fiscal years.
5. Plaintiff Dade County was apportioned $2,516,893 for Fiscal 1973, $2,644,681 for Fiscal 1974 and $2,736,592 for Fiscal 1975 under the enplanement formula. Plaintiff received a grant of $350,530 in Fiscal year 1973, and a grant of $2,363,500 in Fiscal year 1974. The sum of $79,991, the unobligated carryover of Plaintiff's Fiscal year 1972 enplanement apportionment, was credited against Plaintiff's Fiscal 1973 grant. A Fiscal 1972 grant to Plaintiff was increased by $239,345 on June 18, 1975. The unobligated balance of Plaintiff's enplanement entitlement is $5,024,782.

6. At the end of Fiscal 1974, $503.7 million of the $1.46 billion authorized by the Act remained unobligated.
7. Section 302 of the Department of Transportation Appropriations Act for Fiscal 1975 read:

> "None of the funds provided in this Act shall be available for administrative expenses in connection with commitments for grants-in-aid for airport development aggregating more than $310,000,000 in Fiscal Year 1975." Pub.L. 93-391, §302 (1974).

8. Defendants interpreted this appropriations provision to prohibit the obligation in Fiscal 1975 of $193.7 million of the remaining $503.7 million authorized by the Act, and therefore Defendants did not obligate that amount.
9. Defendants instituted a "priority system" to choose which airport development projects to fund, and did not adhere to the distribution formula of the Act.
10. Of the $193.7 million which Defendants did not obligate in Fiscal 1975, $82.8 million were monies apportioned under the Act to enplanement sponsors, $29.4 million were monies apportioned under the Act to States and Territories, and $81.5 million were monies apportioned under the Act to be distributed at Defendants' discretion.
11. Plaintiff Dade County applied for a grant in Fiscal 1975 to utilize the $5,024,782 unobligated balance of monies apportioned to it under the enplanement formula. Plaintiff's application was for an airport improvement project eligible for funding under the Act, and Plaintiff's application was in all respects in compliance with Defendants' regulations. Plaintiff's application was denied solely because Defendants deemed it to be of insufficient priority under their priority system.

CONCLUSIONS OF LAW

1. On March 30, 1977, the United States Court of Appeals for the District of Columbia Circuit decided the appeals from this Court's judgments in this case and the case of *City of Los Angeles v. Adams,* Civil Action No. 75-0679, decided June 23, 1975. The Court of Appeals affirmed this Court's decision in this case and in *Los Angeles* that the Federal Aviation Administration's (FAA) "priority system" for rating airport sponsors' proposed projects unlawfully abrogated the sponsors' entitlements under the enplanement formula of the Airport and Airway Development Act of 1970, 49 U.S.C. § 1715(a)(1)(B). *City of Los Angeles v. Adams,* U.S.C.A. No. 75-1965, March 30, 1977, Slip Op. at 2, 18-20.

2. The Court of Appeals reasoned that Congress did intend that a provision in FAA's annual appropriations act would operate to restrict the amount that the agency could obligate each year, notwithstanding the higher obligational levels specified in the authorizing statute. The Court of Appeals held, however, that the appropriations provision gave FAA no license to revise the authorizing statute's formula for distribution of the monies. The Court stated:

> "When Congress modifies a statute by an appropriations measure, or any other amendment, the agency administering the statute is required to effectuate the original statutory scheme as much as possible, within the limits of the added constraint. . . *We hold that FAA was required to distribute the money available so as to preserve the allocation formula provided by §1715(a).* . . .
>
> *"This results, in our view, in a construction whereby the overall amount of the appropriations measure is allocated, pro rata, in accordance with the formula of the Act."* Los Angeles Slip Op. at 19-20. (emphasis added)

3. Thus, the fundamental premise of the Court of Appeals' decision is that FAA should have employed in Fiscal 1975 a method of exercising the obligational authority available to it which would have ensured that the "shortfall" caused by the appropriations act would fall equally upon the enplanement sponsors' account established pursuant to Section 1715(a)(1)(B), the States' account under Section 1715(a)(1)(A), and the FAA's discretionary account under Section 1715(a)(1)(C).
4. The sole purpose of this remand litigation is to determine how much Dade County should receive under the spending scheme FAA should have devised for Fiscal 1975. *Los Angeles* Slip Op. at 22. The entirety of Dade County's claim, $5,024,782, was available for obligation to Dade County in Fiscal 1975 pursuant to 49 U.S.C. §§1715(a)(1)(B) and 1715(a)(3), and is still available pursuant to this Court's Orders of June 26, 1975 (temporary restraining order), and July 28, 1976 (judgment on the merits).
5. The question remanded for this Court's determination is not a complicated one and does not require the application of any expert's specialized knowledge. An examination of FAA's own numbers provides a sufficient basis for an Order awarding to Dade County the full amount prayed in its Complaint.
6. When P.L. 93-391, §302 was passed on August 28, 1974, it cut off $193.7 million of the $503.7 million obligational authority FAA could otherwise have exercised during Fiscal 1975. Thus, FAA had $310 million to satisfy unobligated balances as of that date consisting of $160.3 million in enplanement sponsors' accounts, $171.1 million in States' accounts, and $172.3 million in FAA's discretionary account. (Defendants' Trial Brief, *City of Los Angeles* v.

Adams, Civil Action No. 75-0679, filed June 2, 1975, at 8).

7. The Court of Appeals decision holds (*Los Angeles* Slip Op. at 18) that FAA could have and should have adhered to both the appropriations act and the Airport Act's distributional formula. FAA should have spent monies in Fiscal 1975 in such a way that $64.567 million would have remained in each account at the end of Fiscal 1975. To accomplish this, FAA should have spent in Fiscal 1975 $95.733 million in enplanement funds, $106.533 million in State funds and $107.733 million in discretionary funds.
8. Instead, however, FAA spent only $77.5 million in enplanement funds in 1975. FAA spent $141.7 million in State funds and $90.8 million in discretionary funds. (Defendants' Trial Brief, *City of Los Angeles v. Adams, supra,* filed June 2, 1975, at 8; Affidavit of Henry Rich, filed May 7, 1975, at 2.) In short, FAA spent $18.233 million less in enplanement funds in Fiscal 1975 than it ought to have spent under the principles articulated in the Court of Appeals' opinion.
9. This Court can most fully give effect to Congress' intent in the Act's Section 1715(a), even as modified by the appropriations provisions, by ordering FAA to make a grant for the full entitlement claimed by Dade County. Such an order will better give effect to Congress' intent than the order proposed by Defendants, which would reduce the award to Plaitiff by some $1.3 million and which would leave unrectified to that extent FAA's violation of the Act's distribution formula. Dade County's claim of $5,024,782 is well within the more than $18 million in enplanement funds which FAA ought to have obligated, but did not obligate during Fiscal 1975.
10. Because prior to the close of Fiscal 1975 this Court entered its temporary restraining order embodying a conditional obligation of Dade County's entitlement, the final order entered here will in no way affect

grants entered into or monies paid by FAA in Fiscal 1975 to non-litigant airport sponsors.

Now it is therefore, ORDERED that Defendants enter into an obligation to pay Plaintiff the amount of $5,024,782, which is the balance of Plaintiff's enplanement entitlement computed according to 49 U.S.C. §§1715(a)(1)(B) and 1715(a)(3).

ENTERED: September 16, 1977

/s/ Barrington D. Parker
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DADE COUNTY, FLORIDA, :
Plaintiff, :
v. : Civil Action
No. 75-1001
HON. BROCK ADAMS, et al., :
Defendants. :

Filed Sep. 16, 1977

ORDER

This case is before this Court on remand from the United States Court of Appeals for the District of Columbia Circuit. The Court of Appeals directed this Court to determine the appropriate amount to be awarded to plaintiff.

This Court has considered the memoranda and the oral argument of counsel and has entered findings of fact and conclusions of law. Accordingly, it is this 16th day of September, 1977,

ORDERED that defendants enter into an obligation to pay plaintiff the amount of $5,024,782, which is the balance of plaintiff's enplanement entitlement computed according to 49 U.S.C. §§1715(a)(1)(B) and 1715(a)(3).

/s/ Barrington D. Parker
Barrington D. Parker
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JACKSONVILLE PORT AUTHORITY :
a body politic and corporate of :
the State of Florida :
Plaintiff, :
v. : Civil Action
: No. 75-1039
HON. BROCK ADAMS, Secretary :
Transportation, et al., :
Defendants. :

Filed Sept. 16, 1977

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

This case is before this Court on remand from the United States Court of Appeals for the District of Columbia Circuit. The Court of Appeals directed this Court to determine the appropriate amount to be awarded to Plaintiff. *Jacksonville Port Authority v. Adams,* U.S.C.A. No. 76-1542, March 30, 1977, Slip Op. at 8, 11. Plaintiff claims that under the principles articulated in the Court of Appeals' decisions in this case and in *City of Los Angeles v. Adams,* U.S.C.A. No. 75-1965, March 30, 1977, Slip Op. 18-20, it is entitled to an award of $292,187, as prayed in its Complaint as filed in this Court June 27, 1975.

This Court, having considered the memoranda filed by Plaintiff and Defendants, and having heard oral argument by the parties, hereby enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Plaintiff Jacksonville Port Authority is a body politic and corporate, duly organized and existing under and by

virtue of the laws of the State of Florida. Plaintiff, through its Board, owns and operates Jacksonville International Airport.

2. Defendants are Federal officials charged with the administration of the Airport and Airway Development Act of 1970 (Act), 49 U.S.C. §1701 *et seq.*

3. The Act (Section 1714) provided for a total of $1.46 billion over Fiscal Years 1971 through 1975 for grants to sponsors of airports served by air carriers certificated by the Civil Aeronautics Board, and to sponsors of airports serving general aviation.

4. The Act (Section 1715) required that one-third of the funds authorized for grants to certificated carrier airports be apportioned to each such airport in the ratio that the number of passengers enplaned at such airport bears to the total number of passengers enplaned at all such airports. [Enplanement formula]. The Act required that one-third of the funds be apportioned to the States and territories according to their area and population. The Act committed the apportionment of one-third of the funds to the discretion of Defendants. Sums apportioned to an airport sponsor under the enplanement formula were to remain available for obligation to that sponsor only for a total of three fiscal years.

5. Plaintiff Jacksonville Port Authority was apportioned $366,963 for Fiscal 1975. Plaintiff received a grant of $74,766 in Fiscal 1975. The unobligated balance of Plaintiff's enplanement entitlement is $292,187.

6. At the end of Fiscal 1974, $503.7 million of the $1.46 billion authorized by the Act remained unobligated.

7. Section 302 of the Department of Transportation Appropriations Act for Fiscal 1975 read:

> None of the funds provided in this Act shall be available for administrative expenses in connection with commitments for grants-in-aid for airport development aggregating more than $310,000,000 in Fiscal Year 1975. Pub. L. 93-391, §302 (1974)

8. Defendants interpreted this appropriations provision to prohibit the obligation in Fiscal 1975 of $193.7 million of the remaining $503.7 million authorized by the Act, and therefore Defendants did not obligate that amount.

9. Defendants instituted a "priority system" to choose which airport development projects to fund, and did not adhere to the distribution formula of the Act.

10. Of the $193.7 million which Defendants did not obligate in Fiscal 1975, $82.8 million were monies apportioned under the Act to enplanement sponsors, $29.4 million were monies apportioned under the Act to States and territories, and $81.5 million were monies apportioned under the Act to be distributed at Defendants' discretion.

11. Plaintiff Jacksonville Port Authority applied for a grant in Fiscal 1975 to utilize the $292,187 unobligated balance of monies apportioned to it under the enplanement formula. Plaintiff's application was for an airport improvement project eligible for funding under the Act, and Plaintiff's application was in all respects in compliance with Defendants' regulations. Plaintiff's application was denied solely because Defendants deemed it to be of insufficient priority under their priority system.

CONCLUSIONS OF LAW

1. On March 30, 1977, the United States Court of Appeals for the District of Columbia Circuit decided the appeals from this Court's judgments in this case and the cases of *City of Los Angeles v. Adams,* Civil Action No. 75-0679, decided June 23, 1975, and *Dade County v. Adams,* Civil Action No. 75-1001, decided July 28, 1976.

The Court of Appeals affirmed this Court's decision in *Los Angeles* and *Dade County* that the Federal Aviation

Administration's (FAA) "priority system" for rating airport sponsors' proposed projects unlawfully abrogated those sponsors' entitlements under the enplanement formula of the Airport and Airway Development Act of 1970, 49 U.S.C. §1715(a)(1)(B). (*Los Angeles* Slip Op. at 2, 18-20.) The Court of Appeals reversed this Court's judgment that this case was moot, and directed this Court "to order FAA to grant to Plaintiff what it was entitled to under the statutory scheme. . ." *Jacksonville* Slip Op. at 8, 11.

2. The Court of Appeals reasoned that Congress did intend that a provision in FAA's annual appropriations act would operate to restrict the amount that the agency could obligate each year, notwithstanding the higher obligation levels specified in the authorizing statute. The Court of Appeals held, however, that the appropriations provision gave FAA no license to revise the authorizing statute's formula for distribution of the monies. The Court stated:

> "When Congress modifies a statute by an appropriations measure, or any other amendment, the agency administering the statute is required to effectuate the original statutory scheme as much as possible, within the limits of the added constraint . . . *We hold that FAA was required to distribute the money available so as to preserve the allocation formula provided by §1715(a)* . . .
>
> *"This results, in our view, in a construction whereby the overall amount of the appropriations measure is allocated, pro rata, in accordance with the formula of the Act." Los Angeles* Slip Op. at 1920. (emphasis added)

3. Thus, the fundamental premise of the Court of Appeals' decision is that FAA should have employed in Fiscal 1975 a method of exercising the obligational authority available to it which would have ensured that the "shortfall" caused by the appropriations act would fall equally upon the enplanement sponsors' account established pursuant to Section 1715(a)(1)(B), the States' account under Section 1715(a)(1)(A), and the FAA's discretionary account under Section 1715(a)(1)(C).

4. The sole purpose of this remand litigation is to determine how much Jacksonville Port Authority should receive under the spending scheme FAA should have devised for Fiscal 1975. *Los Angeles* Slip Op. at 22. The entirety of Jacksonville's claim, $292,187, was available for obligation to Jacksonville in Fiscal 1975 pursuant to 49 U.S.C. §§1715(a)(1)(B) and 1715(a)(3). The Court of Appeals decision makes it clear that this Court has jurisdiction to order FAA to "act as if there had been a conditional grant prior to June 30, 1975." (*Jacksonville* Slip Op. at 4-5.)

5. The question remanded for this Court's determination is not a complicated one and does not require the application of any expert's specialized knowledge. An examination of FAA's own numbers provides a sufficient basis for an Order awarding to Jacksonville the full amount prayed in its Complaint.

6. When P.L. 93-391, §302 was passed on August 28, 1974, it cut off $193.7 million of the $503.7 million obligational authority FAA could otherwise have exercised during fiscal 1975. Thus, FAA had $310 million to satisfy unobligated balances as of that date consisting of $160.3 million in enplanement sponsors' accounts, $171.1 million in States' accounts, and $172.3 million in FAA's discretionary account. (Defendants' Trial Brief, *City of Los Angeles v. Adams,* Civil Action No. 75-0679, filed June 2, 1975, at 8.)

7. The Court of Appeals decision holds (*Los Angeles* Slip Op. at 18) that FAA could have and should have adhered to both the appropriations act and the Airport Act's distributional formula. FAA should have spent monies in Fiscal 1975 in such a way that $64.567 million would have remained in each account at the end of Fiscal 1975. To accomplish this, FAA should have spent in Fiscal 1975

$95.733 million in enplanement funds, $106.533 million in State funds and $107.733 million in discretionary funds.

8. Instead, however, FAA spent only $77.5 million in enplanement funds in 1975. FAA spent $141.7 million in State funds and $90.8 million in discretionary funds. (Defendants' Trial Brief, *City of Los Angeles v. Adams, supra,* filed June 2, 1975, at 8; Affidavit of Henry Rich, filed May 7, 1975 at 2). In short, FAA spent $18.233 million less in enplanement funds in Fiscal 1975 than it ought to have spent under the principles articulated in the Court of Appeals' opinion.

9. This Court can most fully give effect to Congress' intent in the Act's Section 1715(a), even as modified by the appropriations provision, by ordering FAA to make a grant for the full entitlement claimed by Jacksonville. Such an order will better give effect to Congress' intent than the order proposed by Defendants, which would reduce the award to Plaintiff by some $87,000 and which would leave unrectified to that extent FAA's violation of the Act's distribution formula.

Now it is therefore ORDERED that Defendants enter into an obligation to pay Plaintiff the amount of $292,187,which is the balance of Plaintiff's enplanement entitlement computed according to 49 U.S.C. §§1715(a)(1)(B) and 1715(a)(3).

ENTERED: September 16, 1977

/s/ Barrington D. Parker
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JACKSONVILLE PORT AUTHORITY, Plaintiff,	:	
v.	:	Civil Action No. 75-1039
HON. BROCK ADAMS, et al., Defendants.	:	

Filed Sept. 16, 1977

ORDER

This case is before this Court on remand from the United States Court of Appeals for the District of Columbia Circuit. The Court of Appeals directed this Court to determine the appropriate amount to be awarded to plaintiff.

This Court has considered the memoranda and the oral argument of counsel and has entered findings of fact and conclusions of law. Accordingly, it is this 16 day of September, 1977,

ORDERED that defendants enter into an obligation to pay plaintiff the amount of $292,187, which is the balance of plaintiff's enplanement entitlement computed according to 49 U.S.C. § 1715(a)(1)(B) and 1715(a)(3).

/s/ Barrington D. Parker
Barrington D. Parker
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 75-1965

CITY OF LOS ANGELES, a municipal corporation

v.

BROCK ADAMS, as Secretary of Transportation of the United States, *et al., appellants*

Appeal from the United States District Court for the District of Columbia

(D.C. Civil 75-0679)

Argued January 13, 1977

Decided March 30, 1977

SYNOPSIS BY THE COURT

City of Los Angeles filed an action to compel the FAA to make a grant to reimburse it for $9.6 million of expenses incurred in expansion of its airport. The FAA acknowledged that the project was acceptable but denied the grant on the ground that the limited funds available to FAA required a priority system, and other projects with higher priority would exhaust available funds. On appeal from a district court judgment granting this relief, *held:*

1. The Airport and Airway Development Act of 1970 provided funds for airport development, 49 U.S.C. § 1714. Congress stressed the need for commitment of minimum sums for airports to facilitate long-term plann-

ing. As amended, the law provides for the availability of $1.46 billion in the first five years of the program. Plaintiff's action claims entitlement to its allocated share of this sum.

2. Subsequent appropriation statutes operated to limit total grants made in each year. This is discerned to be the intent of the annual provisions that the appropriated funds shall not be "available for administrative expenses in connection with commitments for grants-in-aid for airport development" exceeding the maximum amount. The court must respect the intention of Congress even though an appropriation measure has been used as a vehicle to amend a general statute. This was not an executive impoundment of a legislative appropriation, but a reduction by Congress itself.

3. However, the necessity of reducing amounts actually committed as grants does not authorize the FAA to depart from the provisions of § 15(a)(1) of the 1970 Act dealing with apportionment of funds to airports. This required that funds be apportioned: 1/3 to the states in proportion to area and population; 1/3 to airports in proportion to passengers served (enplanement formula); and only 1/3 at the discretion of FAA (discretionary fund). The FAA has in effect used the variance between the 1970 act and subsequent appropriations measures as to total amounts available, to permit the FAA to disburse the lesser amounts by exercising discretion as to which projects further the public interest.

4. Compliance with its statutory mandate requires the agency to effectuate the original statutory scheme as much as possible, by preserving the allocation formula while respecting the total monetary restraints of the appropriations measures. The case is remanded for the district court to ascertain, with the advice of the Comptroller General, the reduced amount plaintiff would have received if the FAA had applied a pro rata reduction for fiscal year 1975 and to order that amount to be granted by the FAA.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 75-1965

CITY OF LOS ANGELES, a municipal corporation

v.

BROCK ADAMS, as Secretary of Transportation of the United States, *et al., appellants*

Appeal from the United States District Court for the District of Columbia

(D.C. Civil 75-0679)

Argued January 13, 1977

Decided March 30, 1977

David M. Cohen, Attorney, Department of Justice with whom *Rex E. Lee,* Assistant Attorney General, *Earl J. Silbert,* United States Attorney and *Robert E. Kopp,* Attorney, Department of Justice were on the brief, for appellants. *Morton Hollander,* Attorney, Department of Justice, *Eric B. Marcy,* Assistant, United States Attorney also entered appearances for appellants.

Ronald J. Einboden, Deputy City Attorney, City of Los Angeles with whom *Lawrence M. Nagin,* Special Counsel to the City Attorney, City of Los Angeles was on the brief, for appellee.

Before: Wright, Tamm and Leventhal, *Circuit Judges*

Opinion for the Court filed by *Circuit Judge* Leventhal.

Leventhal, *Circuit Judge:* This case arises from tension between substantive legislation and the corresponding ap-

propriations. The district court granted relief to the City of Los Angeles based on its conclusion that the city had a vested right to funds for the development of its airport, as allocated to it by the Airport and Airway Development Act of 1970, 49 U.S.C. §§ 1701 *et seq.* (the "Act".) This right was held to be firm in amount despite the fact that subsequent appropriations limited expenditures to less than that provided by the Act.

We have attentively examined the pertinent enactments and legislative history in order to discern Congress' intent. We conclude that the amount of dollars available for the airport development program was determined by the appropriations measures passed by Congress. However, the Federal Aviation Administration (FAA) went too far when it, in effect, used the discrepancy between the substantive provisions of the Act and the provisions of the appropriations laws as a hinge for enlarging its discretion to decide which projects to fund. The sound underlying doctrine calls for an intermesh of the measures that provides maximum possible respect for an application of both measures. We conclude that in this case the appropriations acts can be given full effect in limiting the amounts available, while the Act is given maximum effect, within the appropriations constraints, in dictating how the limited amounts should be allocated and administered.

On remand, the district court will compose a suitable decree to implement this opinion.

I. The Lawsuit and District Court Orders

The City of Los Angeles owns and operates the Los Angeles International Airport. The City applied in October, 1974, to the FAA for a grant to reimburse it for part of a $21.4 million land acquisition for expansion of the Airport. It applied for $11.5 million under the provisions of the Act, but only claims $9.6 million as of right from its entitlements accrued in fiscal years (FY's) 1974 and 1975.

In March, 1975, the FAA informed the City that the grant would not be made, in spite of the acceptability of

the project and the City's apportionment under the enplanement provisions of the Act (which will be discussed presently). This denial was based on the FAA's position that it was obliged to distribute less funds than apportioned by the Act, that it had instituted a priority system to choose which projects to fund, and that other projects with higher priority than Los Angeles' land acquisition would exhaust the available funds.

The City brought suit on May 1, 1975, seeking declaratory and injunctive relief to compel execution by the FAA of a $9.6 million grant. On May 2, the district court granted a temporary restraining order that prohibited the FAA from granting the $9.6 million to anyone other than the plaintiff. This was followed by a preliminary injunction on May 14 and a memorandum opinion on June 23, finding Los Angeles entitled to the grant. *City of Los Angeles v. Coleman,* 397 F. Supp. 547 (D.D.C. 1975). This was enforced in an order of June 26, 1975.

II. Airport Development Program

The Airport and Airway Development Act of 1970, 49 U.S.C. §§ 1701 *et seq.*, provides for the formulation of a national airport system plan, § 1712, and for federal funding of airport development, § 1714, from a trust fund accumulated from air transportation use taxes, § 1742.

The amount available for airports was the subject of § 14(a) of the Act, 49 U.S.C. § 1714(a).[1] This authorized the

[1] § 14(a) of the Act, as passed in 1970, provided:

> In order to bring about, in conformity with the national airport system plan, the establishment of a nationwide system of public airports adequate to meet the present and future needs of civil aeronautics, the Secretary is authorized to make grants for airport development by grant agreements with sponsors in aggregate amounts not less than the following:
>
> (1) For the purpose of developing in the several States, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, airports served by air carriers certificated by the Civil Aeronautics Board, and airports the primary purpose of which is to serve general aviation and to relieve congestion at airports having a high density of traffic serving other segments of aviation, $250,000,000 for each of the fiscal years 1971 through 1975.
>
> (2) For the purpose of developing in the several States, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, airports serving segments of aviation other than air carriers certificated by the Civil Aeronautics Board, $30,000,000 for each of the fiscal years 1971 through 1975.

Secretary of Transportation — who has delegated his duties under the Act to the FAA — to make grants of "not less than" $250 million in each of FY's 1971-75 for airports serving CAB certified carriers and certain general aviation airports, with $30 million for other airports. In 1973, these amounts were increased to $275 and $35 million, respectively, for FY's 1974-5.

Apportionment of funds for airports is governed, as to the larger airports, by § 15(a)(1) of the Act, codified as 49 U.S.C. § 1715(a)(1).[2] This subsection requires that the

[2] Section 15(a)(1), 49 U.S.C. § 1715(a)(1) provides:

> As soon as possible after July 1 of each fiscal year for which any amount is authorized to be obligated for the purposes of paragraph (1) of section 1714(a) of this title, the amount made available for that year shall be apportioned by the Secretary as follows:
>
> (A)) One-third to be distributed as follows:
>
> (i) 97 per centum of such one-third for the several States, one-half in the proportion which the population of each State bears to the total population of all the States, and one-half in the proportion which the area of each State bears to the total area of all the States.
>
> (ii) 3 per centum of such one-third for Hawaii, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, to be distributed in shares of 35 per centum, 35 per centum, 15 per centum, and 15 per centum, respectively.
>
> (B) One-third to be distributed to sponsors of airports served by air carriers certificated by the Civil Aeronautics

funds be apportioned: (1) one-third to the states in proportion to their area and population, (2) one-third to existing airports serving CAB certificated carriers in proportion to passengers served (the "enplanement formula"), and (3) one-third to be distributed at the discretion of the FAA (discretionary fund). Section 1715(a)(3) provides that amounts apportioned to "sponsors" (public airport authorities applying for airport development grants) under the enplanement formula are to be available for approved airport development projects for the year in which apportioned and two successive years. Any sums not obligated by grant at the expiration of that time are transferred to the discretionary fund.

Congress plainly intended mandatory apportionment of the amounts specified in § 1714(a) to airport sponsors according to the three-fold formula of § 1715(a). The Senate Report explained the policy behind this formula:

> This apportionment formula will satisfy two important needs. First, it will assure that at least one-third of the total funds will be expended in the airport areas of the highest traffic density and where the need is greatest. Secondly, by apportioning at least one-third of the available funds to projects in the States using the "area/population" formula, projects in smaller States and those projects which are not of primary importance will not be neglected.
>
> In addition, the Committee believes it important that the Secretary have at his discretion a significant portion of the allocated revenue in order to provide additional financial assistance

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Board in the same ratio as the number of passengers enplaned at each airport of the sponsor bears to the total number of passengers enplaned at all such airports.

(C) One-third to be distributed at the discretion of the Secretary.

> to projects which have a high priority in the National Airport System Plan. The discretionary fund may be particularly useful in assisting development of new jetport facilities being planned in the high density hub areas in which a high initial ivestment is required.

S.Rep. No.565, 91st Cong., 1st Sess. 28 (1969).

In addition to assuring return of one-third of the funds to their airports of origin to deal with current congestion, the Senate Report stresses the need for commitment of certain minimum sums to airport sponsors to facilitate long term planning. *Id.* at 22, 25:

> Second, the program, which has been subject to annual appropriations for general revenues, has failed to provide a firm, long term and reliable source of revenue upon which airport sponsors could depend for Federal grant-in-aid assistance. The vagaries of year-to-year general appropriations coupled with the fact that grant recipients were generally chosen on a year-to-year basis, and could never rely upon any certain level of Federal assistance, in effect, rendered Federal grants under the program less effective than is now necessary.
>
> * * * *
>
> Second, the Federal Government must provide assurances that project grant assistance will be available and predictable over a relatively long time period and that grants to the airports most in need will be available in some minimum amounts.
>
> * * * *
>
> First of all, this bill is a long-range program in that trust fund revenues for airport development grants are authorized for expenditures for 10 years. In addition to providing a full 10-year

> authorization of trust fund revenues for airport development, the committee believes it equally important to establish a 10-year allocation of user charge derived trust fund revenue for airport development grants, subject to review, so that airport operators may be assured that a minimum level of airport development grants will be available during the program period.
>
> Next, a reasonable apportionment of the airport development funds is made, again subject to review in 5 years, which will guarantee that some of the airport development funds authorized will be reserved for those airports whose needs are the greatest.

As originally enacted, § 1714(b) contained an overall limitation of $840 million on the amount to be obligated in the first five years of the program.[3] As the federal officials defending the lawsuit point out, the $840 million limit in § 1714(b) is inconsistent with interpreting § 1714(a) to provide a full entitlement to $280 million annually for five years. However, the last sentence of § 1714(b) suggests

[3]Section 14(b) of the Act provided in full:

> To facilitate orderly long-term planning by sponsors, the Secretary is authorized, effective on May 21, 1970, to incur obligations to make grants for airport development from funds made available under this subchapter for the fiscal year ending June 30, 1971, and the succeeding four fiscal years in a total amount not to exceed $840,000,000. No obligation shall be incurred under this subsection for a period of more than three fiscal years and no such obligation shall extend beyond June 30, 1975. The Secretary shall not incur more than one obligation under this subsection with respect to any single project for airport development. Obligations incurred under this subsection shall not be liquidated in an aggregate amount exceeding $280,000,000 prior to June 30, 1971, an aggregate amount exceeding $560,000,000 prior to June 30, 1972, and an aggregate amount exceeding $840,000,000 prior to June 30, 1973.

49 U.S.C. § 1714(b) (1970). Note the statutory emphasis on long term planning.

that from the start Congress may have intended finally for the first three years of the program, with a second look for the last two years. In any event, that is what Congress did when it amended the Act in 1973. P.L. 93-44, § 3, 87 Stat. 89 (1973). The amendment raised the authorization amounts of § 1714(a) from $280 million to $310 million for FY's 1974-75. The same 1973 law amended § 1714(b).[4] Summarizing this not uncomplicated amendment, the limit on cumulative obligations to be liquidated was extended through FY 1975 and reconciled with the minimum amounts set forth in § 1714(a). These provisions had the effect of using the same amounts as both minima and maxima, as to the amounts to be obligated under each part of the formula. Technical problems were generated by the amendment but as to the case before us, which concerns what the FAA was required to grant in FY 1975, there is no inconsistency or ambiguity in the Act's mandate to the FAA.

[4]At the time suit was brought, section 14(b) read:

> To facilitate orderly long-term planning by sponsors, the Secretary is authorized, effective on May 21, 1970, to incur obligations to make grants for airport development from funds made available under this subchapter for the fiscal year ending June 30, 1971, and the succeeding four fiscal years in a total amount not to exceed $1,460,000,000. No obligation shall be incurred under this paragraph for a period of more than three fiscal years and no such obligation shall be incurred after June 30, 1975. The Secretary shall not incur more than one obligation under this paragraph with respect to any single project for airport development. Obligations incurred under this paragraph shall not be liquidated in an aggregate amount exceeding $280,000,000 prior to June 30, 1971, an aggregate amount exceeding $560,000,000 prior to June 30, 1972, an aggregate amount exceeding $840,000,000 prior to June 30, 1973, an aggregate amount exceeding $1,150,000,000 prior to June 30, 1974, and an aggregate amount exceeding $1,460,000,000 prior to June 30, 1975.

49 U.S.C. § 1714(b) (Suppl. IV 1974).

III. Appropriations Act Limitations

In each year's appropriations act for the FAA, there was a nearly identical provision limiting the FAA's administrative funds, a provision which in our view put specific limits on the amount of total airport development grants. For example, the appropriations measure for FY 1975[5] provided:

> None of the funds provided in this Act shall be available for administrative expenses in connection with commitments for grants-in-aid for airport development aggregating more than $310,000,000 in fiscal year 1975.

The FAA correctly interpreted § 302 and its predecessors as substantive limitations on its granting authority.

The problem of grants in FY 1975 arises in large part from the circumstances that during FY's 1971, 1973 and 1974, the FAA obligated even less than was available under its own interpretation of the annual appropriations acts.[6] By FY 1975, there was a backlog of $193.7 million allocated to sponsors, but not obligated. Under the FAA interpretation, it was prohibited from liquidating the sponsors' "entitlements" under the Act — the FY 1975 apportionments plus the backlog — by the statutory deadline of June 30, 1975 that ended FY 1975.

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[5]P.L. 93-391, § 302, 88 Stat. 780 (1974).

[6]The boxscore for each year of the program appears in the following table. All figures are in millions (M).

FY	Minimum Annual Authorization (M)	Appropriations Act	Administrative Limit (M)	Actually Obligated (M)	Backlog (M)
1971	$280	P.L. 91-645	$250	$170	$110
1972	$280	P.L. 92-74, § 303	$280	$280	$110
1973	$280	P.L. 92-398, § 302	$280	$206.6	$183.4
1974	$310	P.L. 93-98, § 302	$300	$299.7	$193.7
1975	$310	P.L. 93-391, § 302	$310	?	

The district court ruled that "[t]he Appropriations Act does not alter the obligation power in any way but rather serves to limit FAA administrative expenses."[7] The district court reasoned that it would be "illogical" of Congress to limit the FAA's obligational authority with the result of freezing money in the Trust Fund.[8]

The district court's interpretation would mean that this $310 million figure — which reflected an annual tussle between the House (favoring a slightly lower figure) and the Senate — was a solemn combat to declare an amount which in any event was far in excess of *administrative* expenses. It seems obvious to us that numbers like $310 million are intended to relate to the amounts of the grants to sponsors, not to the FAA's expenses (salaries, travel, stationery, and the like) in making the grants.

The reasonably clear meaning of § 302 is this: Congress used the "administrative expenses" provision as a device to limit total grants made in each year. This interpretation is supported by the plain and natural meaning of the words used; by the absurdity of a contrary construction; and by the legislative history of the appropriations measure.[9]

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[7]City of Los Angeles v. Coleman, 397 F. Supp. 547, 556 (1975).

[8] It would thus be illogical for Congress to pass a limitation on yearly obligational authority with the result that some 193 million dollars is left frozen in the Trust Fund with no way for the FAA to distribute it to sponsors who are entitled to the funds under the statute. Furthermore, if Congress had intended to put a limitation on yearly expenditures previously authorized, it could have done so straight forwardly through an amendment, rather than changing the statutory funding scheme through an ambiguous section of an appropriations act. In fact, Congress *increased* obligational authority by amending § 1714 in 1973, which indicates that Congress could likewise have *decreased* obligational authority by amendment to the Airport Act.

Id. at 556.

[9]The combination of legislative history and avoidance of "absurd or futile results" would even warrant departure from the "plain meaning." United States v. American Trucking Associations, 310 U.S.

Year after year, the House proposed these limitations, the Senate objected that they were inconsistent with the provisions and purposes of the Act, and the House prevailed in including the limitation provision, while sometimes compromising on its amount.

Thus for FY 1971, although the amount contemplated by the substantive 1970 Act would have been $280 million, the House bill provided only $220 million. The Senate Appropriations Committee objected:

> The Committee recommends the deletion of Section 303 of the House bill.
>
> * * * *
>
> The language in the House version of the bill would negate the long-term contracting authority which has been provided in the Airport and Airway Development Act (P.L. 91-258).[10]

As the Conference Report reveals, the House prevailed on the principle of an amount less than that contemplated by the 1970 Act, while compromising on the exact figure:

> Amendment No. 33: Restores House provision and limits commitments for grants-in-aid for airport development to $250,000,000 instead of $220,000,000 as proposed by the House.[11]

534, 543-44 (1940). "To the extent that the Court of Appeals excluded reference to the legislative history of the FWPCA in discerning its meaning, the court was in error." Train v. Colorado Public Inerest Research Group, 426 U.S. 1, 9-10 (1976). *See* Cass v. United States, 417 U.S. 72, 77-79 (1974).

In the present case, we are able to apply the plain meaning of the language of § 302, for it serves the meaningful objective of limiting the sum of airport development grants made by the FAA in the appropriate year. The fact that this was a departure from what was contemplated when the 1970 Act was passed does not make it "illogical" or absurd.

[10]S. Rep. No. 1372, 91st Cong., 2d Sess. 11 (1970).

[11]H.R. Rep. No. 1730, 91st Cong., 2d Sess. 9 (1970). Although H.R. 17755 was not enacted into law, Congress enacted a continuing resolution which permitted operations at the rate it provided, P.L. 91-645, 84 Stat. 1893 (1971).

The pattern was repeated for FY 1972, when the amount contemplated by the 1970 Act would have been $280 million plus a backlog of $110 million (*see* note 6, *supra*). The House appropriations proposal was described in the House report:

> As in the last year's bill, a limitation on obligations for development grants in fiscal year 1972 is included in the bill. The limitation recommended is $280,000,000. . . .[12]

The Senate demurred:

> The Committee was informed that the 1972 program level for the airport development program will be $280 million, the minimum annual level authorized (Sec. 14, P.L. 91-258). Section 303 of the House bill sets a limitation at the authorization level on grant-in-aid commitments.
>
> The Committee has recommended deletion of Section 303 of the House bill in order to comply with the provisions of the Airport and Airways Development Act (P.L. 91-258).[13]

The conference committee restored the House provision:

> Amendment No. 37: Restores the House provision limiting commitments for grants-in-aid for airport development to $280,000,000.[14]

This pattern was repeated again in the appropriations process for FY 1973.[15] For FY's 1974 and 1975, the principle had been established and the disagreement was only over the amount of the limitation.[16]

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[12]H.R. Rep. No. 341, 92d Cong., 1st Sess. 13 (1971).

[13]S. Rep. No. 271, 92d Cong., 2d Sess. 12 (1971).

[14]H.R. Rep. No. 382, 92d Cong., 2d Sess. 8 (1971).

[15]H.R. Rep. No. 1082, 92d Cong., 2d Sess. 17 (1972); S. Rep. No. 865, 92d Cong., 2d Sess. 15 (1972); H.R. Rep. No. 1312, 92d Cong., 2d Sess. 9 (1972).

[16]H.R. Rep. No. 285, 93d Cong., 1st Sess. 19 (1973); S. Rep. No. 346, 93d Cong., 1st Sess. 13 (1973); H.R. Rep. No. 426, 93d Cong., 1st Sess. 9 (1973); H.R. Rep. No. 1111, 93d Cong., 2d Sess. 17 (1974).

It will be noted that these appropriations reports, on both the House and Senate sides, referred to the figure set in the appropriations bills as *limitations on the grants in aid*. The same reference recurred when Congress subsequently increased the amount for FY 1975 by $25 million.[17] These references undercut the district court's interpretation that the amount was only a limit on the FAA's administrative expense.

According to its own rules, Congress is not supposed to use appropriations measures as vehicles for the amendment of general laws, including revision of expenditure authorization.[18] In general, the doctrine disfavoring

[17] *Notwithstanding the limitation on Grants-in-Aid for Airport Development contained in section 302 of Public Law 93-391,* the $25,000,000 appropriated by Public Law 91-168 for such grants and subsequently transferred to the Airport and Airway Development Fund by Public Law 91-258 shall be available for obligation through June 30, 1975.

P.L. 93-554, 88 Stat. 1779 (1974) (emphasis added). This added $25 million is for the discretionary fund. H.R. Rep. No. 1503, 93d Cong., 2d Sess. 12 (1974). Thus it does not affect the amounts available to satisfy the enplanement allocations.

[18] Senate Standing Rule XVI, ¶ 4 (1975) provides:

> No amendment which proposes general legislation shall be received to any general appropriation bill, nor shall any amendment not germane or relevant to the subject matter contained in the bill be received . . . .

House Rule XXI, ¶ 2 (94th Cong. 1976) provides:

> No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill. . . .

repeals by implications is said to apply "with full vigor" when the subsequent law is an appropriations measure.[19] Where Congress chooses to do so, however, we are bound to follow Congress's last word on the matter even in an appropriations law. "There can be no doubt that Congress could suspend or repeal the authorization contained in § 9; and it could accomplish its purpose by an amendment to an appropriation bill, or otherwise." *United States v. Dickerson,* 310 U.S. 554, 555 (1940). Courts have treated appropriations measures as amendments in a number of cases.[20]

But see 110 Cong. Rec. 11391 (1967) and 115 Cong. Rec. 21471 (1969), upholding limitations on the amount and use of funds in appropriations.

[19] Committee for Nuclear Responsibility v. Seaborg, 149 U.S.App.D.C. 380, 382, 463 F.2d 783, 785 (1971); Hill v. TVA, No. 76-2116, slip op. at 14 (6th Cir., Jan. 31, 1977). These cases held that there had been no repeal of a general protective statute (NEPA and the Endangered Species Act) by appropriations for a particular project. However, in Friends of the Earth v. Armstrong, 485 F.2d 1, 8-10 (10th Cir. 1973), *cert. denied,* 414 U.S. 1171 (1974),the court held that an appropriations prohibition on expenditures overrode earlier congressional intent expressed in a statute governing the use of a particular river, the Colorado River Storage Act.

See also Concerned Residents of Buck Hill Falls v. Grant, 537 F.2d 29, 34-35 (3d Cir. 1976) (subsequent appropriation does not excuse agency's statutory violation).

[20] United States v. Dickerson, 310 U.S. 554 (1940), held that an appropriations measure, repeatedly enacted in successive years, which denied funds prospectively for payment of reenlistment allowances, had the effect of suspending the right to the allowances during the affected year. It cites a number of precedents. Post-*Dickerson* precedents include *e.g.* Tayloe v. Kjaer, 84 U.S.App.D.C. 183, 184, 171 F.2d 343, 344 (1948); Eisenberg v. Corning, 86 U.S.App.D.C. 21, 179 F.2d 275 (1949); Friends of the Earth v. Armstrong, *supra,* note 19 at 9.

The overall statutory context may, of course, lead to the conclusion in some instances that a mere appropriations omission or subsequent repeal does not undercut vested obligations. New York Airways, Inc. v. United States, 369 F.2d 743, 749 (Ct. Cl. 1966); Larionoff v. United States, 175 U.S.App.D.C. 32, 533 F.2d 1167, 1179-80 (1976), *cert. granted,* 45 U.S.L.W. 3416 (Dec.7, 1976).

We are of course aware of the impoundment cases.[21] They are not dispositive of this case, however, because this case does not involve independent refusal by the Executive or agency to spend the amounts that Congress has required. Here, the FAA was caught in a statutory squeeze where the later appropriations directive it had to follow prevented it from carrying out the scheme established by the 1970 Act. Congress knew of the backlog of money allocated by the Act which had not been granted to sponsors by the FAA. By the § 302 limitation on granting, Congress froze this backlog in the Trust Fund, perhaps for later use. This was not executive "impoundment" of the legislative appropriations; it was a congressional reduction—if an impoundment at all, an impoundment by statute.

IV. Remaining Vitality of the Act

We have concluded that the appropriations measures considered in Part III preventd the FAA from making the "minimum" grants provided by the 1970 Act, thereby necessarily modifying the FAA's course in administering the program. We turn to the question of defining the FAA mandate as modified, and build on the premise that as much of the 1970 Act as possible should be retained, consistent with the provisions and purpose of the modifying appropriations.

If Congess does not appropriate enough money to meet the needs of a class of beneficiaries prescribed by Congess,

[21] Train v. City of New York, 420 U.S. 35 (1975). *E.g.* State Highway Comm'n v. Volpe, 479 F.2d 1099, 1115 (8th Cir. 1973); Guadamuz v. Ash, 368 F. Supp. 1233 (D.D.C. 1974); Commonwealth of Pennsylvania v. Weinberger, 367 F. Supp. 1378 (D.D.C. 1973); National Council of Mental Health Centers, Inc. v. Weinberger, 361 F. Supp. 897 (D.D.C. 1973). *See* the Impoundment Control Act of 1974, 31 U.S.C. §§ 1400 *et seq.*; Commonwealth of Pennsylvania v. Lynn, 163 U.S.App.D.C. 288, 297-301, 501 F.2d 848, 857-61 (1974), found a program suspension for purposes of reassessment to be valid and in furtherance of the purposes of the act.

and if Congress is silent on how to handle this predicament, the law sensibly allows the administering agency to establish reasonable priorities and classifications.[22]

However, in the case before us, the shortfall of obligational authority in no way prevented the FAA from adhering to the distributional formula in the mandate of the act.

While we are in agreement with the FAA that the annual appropriations measures subjected it to constraints beyond those in the Act, our agreement does not extend to FAA's response to the statutory squeeze. What the FAA did was to take the constraints as authorizing it to establish a priority system to determine which of the § 1715(a) entitlements to grant to sponsors within the § 302 appropriations limit. The priority system was applied equally to a sponsor's entitlement for the current year and the backlog due under 49 U.S.C. § 1715(a) (3). The priority system involves a numerical rating based on the type of airport, the essentiality of the work, and the timing of the need for the project, but in the last analysis the decision as to which projects to fund was a matter of the FAA's judg-

[22] Having found that the congressional appropriation was intended to cover welfare services at least to those Indians residing "on or near" the reservation, it does not necessarily follow that the Secretary is without power to create reasonable classifications and eligibility requirements in order to allocate the limited funds available to him for this purpose. . . . Thus, if there were only enough funds appropriated to provide meaningfully for 10,000 needy Indian beneficiaries and the entire class of eligible beneficiaries numbered 20,000, it would be incumbent upon the BIA to develop an eligibility standard to deal with this problem, and the standard, if rational and proper, might leave some of the class otherwise encompassed by the appropriation without benefits.

Morton v. Ruiz, 415 U.S. 199, 230-31 (1974).

ment.[23] In this case, although the City of Los Angeles had a project that on its own merits had approval, it was granted only a small portion of its apportionment for FY's 1974-75 — $0.95 million of $5.7 million for 1974 and $0.54 million of $5.4 million for 1975.

We think the FAA acted impermissibly when it used the confrontation and resolution of conflicting statutory mandates on total amounts, as a basis for asserting a new discretion concerning the disbursement of airport development allocations that flew in the face of Congress' unambiguous and uncontradicted demarcation of that discretion. When Congress modifies a statute by an appropriations measure, or any other amendment, the agency administering the statue is required to effectuate the original statutory scheme as much as possible, within the limits of the added constraint. Section 302 only restricted the *amount* the FAA could obligate. Section 302 said not a word about the method of distributing the money available. We hold that the FAA was required to distribute the money available so as to preserve the allocation formula provided by § 1715(a).

The explicit formula of § 1715(a) (1) limits the FAA's discretion to only one-third of the total money available for the development of large airports. Congress not only gave the airports a one-third allocation, but further provided in § 1715(a) (3), that the sponsors' entitlement to their funds allocated under the enplanement formula would continue for two years after the year of initial apportionment. There is an explicit provision for remission

[23]The FAA's annual report to Congress for FY 1974 described the priority system thusly:

> Priorities are determined from a numerical rating table through which various factors are weighed, such as work essentiality, NASP code, and timing of need. This process is not purely a mathematical computation, but rather, the exercise of judgmental discretion in the application of these guidelines.

Attachment D to Affidavit of Jess Speckart, May 7, 1975.

to the FAA's discretionary fund — if the funds allocated by the enplanement formula and [sic] not used within the 3-year period (the initial year of allocation plus two leeway years). The FAA had no valid basis for reaching out for still more discretionary funds. The legislative history of the Act shows that the 2/3 mandatory, 1/3 discretionary scheme of § 1715(a) was deliberately chosen to serve the policies Congress perceived.[24]

This results, in our view, in a construction whereby the overall amount of the appropriations measure is allocated, pro rata, in accordance with the formula of the Act. It appears from our research that a direction to preserve the allocation formula in the event of an insufficiency of funds was initially proposed by the House,[25] but was not incorporated in the Act as passed, in 1970.

The pro rata reduction we have provided is consistent with the Act's goal of encouraging long term planning with the mandatory enplanement funds. Despite a sponsor's entitlement under the Act, and even after "obligation" by the FAA, actual receipt of the money is contingent on appropriation by Congress. There is an unavoidable contingency, which materialized in this instance, that the money a sponsor was counting on would not be fully appropriated. But the uncertainty facing the airport sponsor

[24]The Senate Report on Pub. L. No. 91-258 stated:

> The apportionment formula provided is for a 10-year period and will assure that 149 hub communities will receive a guaranteed level of airport assistance grants each year providing those communities' project applications are approved. *In addition to that fixed sum,* all air carrier and reliever airports in any State will be eligible for the amount set aside for that State under the one-third portion apportioned to projects in the States. Finally, a hub area may well also receive grant assistance from the Secretary's discretionary account if it has a relatively high priority in the national airport system plan.

S. Rep. No. 565, 91st Cong., 2d Sess. 28 (1969) (emphasis added).

[25]*See* H.R. Rep. No. 601, 91st Cong., 1st Sess. 21 (1969).

is less under our pro rata approach, than if the FAA had discretion to withhold apportioned funds virtually in entirety.

V. Remand

We remand the case to the district court to determine the percent reduction to be applied to Los Angeles' $9.6 million enplanement portion. This course is necessitated by the state of the record. Neither party advocated the solution to the statutory puzzle which we find best complies with Congress' intent. They each presented an all-or-nothing approach. Thus we lack the advocacy of the parties, the pertinent facts of the FAA's history of granting enplanement funds, and expert advice available in the government. That expert advice is available not only in the strictly Executive Branch but in the General Accounting Office, for we have in mind that the district court may be well advised to obtain assistance from the Comptroller General's expertise in matters of expenditures, reductions by appropriations, and impoundments.[26]

Section 1714 (b), as it was during the time we are called on to judge the FAA's duty, FY 1975, prohibited the FAA from incurring any obligation under that subsection's authorization after June 30, 1975. Relief for Los Angeles is nonetheless possible now under that provision because of the order entered by the district court on June 25, 1975. Having found for the plaintiff, the court ordered the FAA to obligate the full $9.6 million to Los Angeles before the

[26] *See* the role given the Comptroller General in the Impoundment Control Act of 1974, 31 U.S.C. §§ 1405 & 1406. *Cf.* M. Steinthal & Co. v. Seamans, 147 U.S.App.D.C. 221, 237, 455 F.2d 1289, 1305 (1971) (Comptroller General expertise in government procurement); Wheelabrator Corp. v. Chafee, 147 U.S.App.D.C. 238, 245, 455 F.2d 1306, 1313 (1971) (primary jurisdiction of the General Accounting Office in procurement bid protests).

June 30 deadline, subject to modification by the court for any statutory deficiencies in Los Angeles' project.[27] Thus, the district court established jurisdiction over Los Angeles' full entitlement and can proceed to order the payment of the appropriately reduced amount on remand.

We remand the case to the district court to determine, in accordance with this opinion, the method of pro rata reduction the FAA should have used in granting enplanement funds up to the limits set by the appropriations act for FY 1975. The court shall also apply this method to the facts of FY 1975, including the amount of approvable applications submitted by sponsors with enplanement apportionments and the total obligation of enplanement funds mandated by the Act. The court shall then order the FAA to grant to the City of Los Angeles what it would have gotten if the FAA had been using during FY 1975 the method that, in our view, was mandated by Congress.

So ordered.

[27] City of Los Angeles v. Coleman, Civ. No. 75-0679, Order at 2 (D.D.C. June 26, 1975), J.A. 283.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 76-1542

JACKSONVILLE PORT AUTHORITY, a body politic and corporate of the State of Florida,
Appellant

BROCK ADAMS, as Secretary of Transportation of the United States, et al.

Appeal from the United States District Court for the District of Columbia
(D.C. Civil 75-1039)

Argued January 13, 1977
Decided March 30, 1977

SYNOPSIS BY THE COURT

Jacksonville Port Authority (Jacksonville) filed suit for $292,187 allocated to it for fiscal year 1975 under the Airport and Airway Development Program, 49 U.S.C. § 1715(a)(1)(B). Jacksonville's application was acceptable on its own merits but was denied by FAA on application of its"priority system." Jacksonville filed suit four days after the district court held that system invalid, and shortly prior to the close of fiscal year 1975. The district court denied a temporary restraining order (TRO), and thereafter held that the FAA's authorization to obligate funds had expired with the fiscal year, rendering the case moot. On appeal of the dismissal, *held:*

1. Where application for allotted funds was timely made and suit filed prior to the expiration of the agency's authorization to grant funds, if denial of a TRO was an abuse of discretion, the case is not moot. On remand, the district court may order the FAA to grant Jacksonville the money due under the statute. The expiration of the FAA's authorization prohibits it from initiating a grant, but not from complying with a judicial mandate. The appellate court's authority to enter such an order in the interest of justice, 28 U.S.C. § 2106, is supported by the public interest in the FAA's following the congressional mandated allocation formula, and the subsequent congressional extension of the program.

2. It was an abuse of discretion to have denied an order holding the matter in status quo, where: the court had ruled against the FAA's position on the merits; Jacksonville was in danger of losing the money by lapse of the FAA's authority; and preliminary relief would hold open the grant without actual payment, subject to later modification.

3. The district court's "equitable" grounds for withholding relief are not accepted. Uncertainty as to which project to apply allocated funds was no barrier to a TRO in light of the conditional nature of the grant sought. Jacksonville's entitlement to its fiscal year 1975 funds was not undercut by prior grants.

4. The case is remanded to order the FAA to grant Jacksonville the amount due under the companion opinion, No. 75-1965, *City of Los Angeles v. Adams.*

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 76-1542

JACKSONVILLE PORT AUTHORITY, a body politic and corporate of the State of Florida, APPELLANT

v.

BROCK ADAMS, as Secretary of Transportation of the United States, et al.

Appeal from the United States District Court for the District of Columbia

(D.C. Civil 75-1039)

Argued January 13, 1977

Decided March 30, 1977

Charles S. Rhyne, with whom *William S. Rhyne* and *Donald A. Carr* were on the brief, for appellant.

David M. Cohen, Attorney, Department of Justice for appellees. *Rex E. Lee,* Assistant Attorney General, *Earl J. Silbert,* United States Attorney, *Robert E. Kopp* and *John M. Rogers,* Attorneys, Department of Justice were on the brief for appellees. *John A. Terry, Tobey W. Kaczensky,* Assistant United States Attorneys and *Thomas G. Wilson,* Attorney Department of Justice also entered appearances for appellees.

Before: WRIGHT, TAMM and LEVENTHAL, *Circuit Judges*

Opinion for the Court filed by *Circuit Judge* LEVENTHAL.

LEVENTHAL, *Circuit Judge:* The Jacksonville Port Authority sought a temporary restraining order (TRO) shortly after District Judge Parker had invalidated the FAA's priority system and ruled that airport sponsors are entitled to their full allotment of airport development funds under the enplanement formula in 49 U.S.C. § 1715(a)(1)(B).[1] Plaintiff's application for the TRO was filed shortly before the cutoff date of the authority of the Federal Aviation Administration (FAA) to make funding obligations. The application was denied. After passage of the cutoff date, Judge Parker dismissed the complaint for injunctive relief as moot, on the grounds that the FAA was unequivocally prohibited by 49 U.S.C. § 1714(b), (now, § 1714(b)(1)) from taking action after June 30, 1975 to obligate Trust Fund money.

I. MOOTNESS

Some of the impoundment cases[2] faced a similar argument raised by the federal defendants — that even if funds were wrongfully impounded, they could not be disbursed after the end of the fiscal year for which they had been appropriated by virtue of the lapse provision of 31 U.S.C. § 701(a)(2). In most cases, preliminary injunctive relief was granted by the district court to prevent lapse and hold the situation in status quo for determination on the merits.[3] Relief has been granted in two impoundment cases: where

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[1]City of Los Angeles v. Coleman, 397 F. Supp. 547 (D.D.C. 1975), affirmed in part, reversed in part, in companion decision issued this day, No. 75-1965, City of Los Angeles v. Adams.

[2]*See generally* Train v. City of New York, 420 U.S. 35 (1975); State Highway Comm'r v. Volpe, 479 F.2d 1099 (8th Cir. 1973) and cases cited *infra,* notes 3-4.

[3]*E.g.*, National Council of Community Mental Health Centers v. Weinberger, 361 F. Supp. 897, 900 (D.D.C. 1973), *Los Angeles, supra;* State of Oklahoma v. Weinberger, 360 F. Supp. 724 (W.D. Okla. 1973); Community Action Programs Executive Directors Assn. of New Jersey v. Ash, 365 F. Supp. 1355 (D.N.J. 1973); Bennett v. Butz, 386 F. Supp. 1059 (D. Minn. 1974).

suit was brought after the end of the fiscal year for which funds were due, *Commonwealth of Pennsylvania v. Weinberger,* 367 F. Supp. 1378 (D.D.C. 1973), and where class certification was sought thereafter, *State of Louisiana v. Weinberger,* 369 F. Supp. 856 (E.D. La. 1973). The courts held that the suits were not blocked by 31 U.S.C. § 701(a)(2).

> This court does not agree with defendants that [§ 701(a)(2)] can, or should, be used to provide a defense to the Executive Branch against suits to compel the payment of funds appropriated by Congress and impounded by the Executive Branch during and through the applicable fiscal year.[4]

We are presented with an easier case, as Jacksonville sued for grant of its application and sought preliminary relief before the statutory deadline. Relief at this time would unquestionably be available if the district court had issued a preservation decree such as it did in *Los Angeles* — requiring the FAA to make a provisional grant that would be subject to reflection on the merits. Before we examine whether it was an abuse of discretion to deny this relief in a TRO, we must decide whether the case is moot, *i.e.,* whether the FAA can now be ordered to make grants of entitlements from fiscal year 1975.

In *Stone v. White,* 301 U.S. 532 (1937), trustees sued for refund of a tax which should have been collected from the beneficiary of the trust. Collection from the beneficiary was barred by the statute of limitations. Applying equitable principles, the Court took account of the reality of the sole beneficiary's identity of interest with the

[4]*Louisiana, supra,* 369 F. Supp. at 860. *See Pennsylvania, supra,* 367 F. Supp. at 1385-87. These cases involved education funds to which there was an arguably applicable carryover of authorization provision, 20 U.S.C. § 1225(b). *Pennsylvania,* 367 F. Supp. at 1382-85; *Louisiana,* 369 F. Supp. at 861. The courts held that the money was available even without reliance on that provision.

trustees and allowed the government to retain the tax due, in spite of a statutory prohibition against using a time barred deficiency as an offset to a refund.[2] Similar equitable considerations prevent an agency from raising a statutory prohibition on it — in reality, a command to meet a deadline — as a defense to a suit brought prior to that deadline for money withheld by the agency's arrogation of unauthorized discretion.

In our view, the prohibition in § 1714(b) operates as a ban on initiation of a grant by the FAA on its own after June 30, 1975. Congress imposed a deadline on the FAA, to avoid procrastination and the dangers of an agency discretion to dip into old unused authorizations. Here, Jacksonville has made timely application and brought suit within the time the agency is authorized to act, seeking judicial determination and vindication of its entitlement to the funds.

A congressional deadline on an agency's ability to take action on its own motion does not preclude an agency's authority to take later action on direction of a court exercising judicial review.[6] Appellate courts have been given authority to enter such remedies as may be appropriate in the interest of justice. 28 U.S.C. § 2106. If the district court abused its discretion in failing to preserve plaintiff's rights unequivocally with a TRO, the appellate court may, in the interest of equity and justice, make the plaintiff whole by ordering the FAA and the district court to act as if there had been a conditional grant prior to June 30, 1975.

This judicial approach is not unlike the equitable doctrines of constructive trust or equitable lien, where an equity court deems a trust or lien to have arisen at a prior time from the actions and relationship of the parties. In

[5]*Stone, supra,* 301 U.S. at 538-39. In Rothensies v. Electric Storage Battery Co., 329 U.S. 296, 300-03 (1946), the Court limited the recoupment doctrine to taxes arising from a single transaction.

[6]International Harvester Co. v. Ruckelshaus, 155 U.S.App.D.C. 411, 446, 478 F.2d 615, 650 (1973).

the interest of justice, the court may proceed as if action that should have been taken in the courthouse was timely taken.[7]

As the district court said in the *Pennsylvania* case:

> [T]he equitable power of the Federal Courts is broad, and it is a well-established prerogative of the Court to treat as done that which should have been. Here the Court has found that the funds should have been obligated in FY 1973. The statutory specifications of authority to obligate Federal funds define and limit Defendants' standard operating authority, but do not purport to circumscribe the powers of the Federal Courts to provide appropriate relief when the disputed funds are found to be available.[8]

We recently decided that the district court could award to the rightful recipients federal grants recovered from improper disbursement, notwithstanding the lapse provision and expiration of the agency's authority to obligate funds.

> In any event, a District Court is enabled, as we shall see, to order funds to be held available, beyond a statutory lapse, if equity so requires.[9]

We further noted, after quoting from the *Pennsylvania* opinion:

> Indeed, the trial court in this case ordered that funds which had been impounded and then released continue to be made available to the states beyond the lapsing date. That earlier order

[7]Dillane v. United States, 121 U.S.App.D.C. 354, 350 F.2d 732 (1965) (appeal allowed out of time if the defendant's counsel failed to notifty him of the right to appeal, amounting to ineffective assistance of counsel).

[8]Commonwealth of Pennsylvania v. Weinberger, 367 F. Supp. 1378, 1387 (D.D.C. 1973).

[9]National Association of Neighborhood Health Centers v. Mathews, No. 76-1434, slip op. at 35 (D.C. Cir. Nov. 23, 1976).

> is conceivably different, however, since HEW would continue its disbursements under the authority of the original statute. Here, it is urged, HEW is without authority to continue since the original statute has been replaced. But, the new statute, in pertinent part, appears quite similar to the old one, the subject of this case, and may well provide continued authority for the HEW Plan.[10]

In appraising the equity and justice of ordering a grant under lapsed authority, it is material to consider whether Congress has turned its back on the program as contrary to sound policy. As to the statute at hand, Congress has provided authority for grants for fiscal years 1976-80, P.L. 94-353, 90 Stat. 871 (1976). The House Report states:

> Extensive hearings by the Subcommittee on Aviation have demonstrated that the 1970 Act, as amended, was a sound measure which has, in the main, worked well.[11]

The Report further states:

> Another problem stems from the airport sponsors' inability to adequately plan on the availability of Federal support for a development project. This has caused waste and inefficiency, and has delayed needed development. To gain the most benefit from limited local and Federal funds, sponsors must be assured of receiving proper funding over a period of years for those particular projects which are important to the system.[12]

[10]*Id.* at 37.

[11]H.R.Rep. No. 594, 94th Cong., 1st Sess. 11 (1975).

[12]*Id.* at 14.

The allocation formula for large airports in § 1715(a) for FY's 1976-80 retains the provision of the 1970 Act, that limits the discretionary fund to one-third of the total. The mandatory allocation formula has been modified, but in a way that enhances the significance of enplanement.[13] This continuing commitment undergirds the soundness of a make-whole mandate to assure a grant of the funds that were due in FY 1975.

We have noted that Jacksonville did not sleep on its rights in making application or bringing suit. We have considered the question whether there was lack of diligence in failure to appeal the denial of the TRO. Had Jacksonville filed such an appeal, Government counsel would likely have responded that denial of a TRO is not appealable under 28 U.S.C. § 1291(a)(1). There is a doctrine that such denial is appealable where it would moot the case and prevent effective review.[14] Without deciding whether that appeal could have been maintained, we do not consider the failure to appeal a lack of diligence. The TRO was denied on June 27, 1975 (a Friday), and we do not think it sound to impose a burden of frantic exhaustion of appellate remedy at the last moment.[15]

[13]Enplanement is now the sole factor. The formula has been changed so as to favor smaller airports by decreasing the incremental grant as passenger volume increases. P.L. 94-353, 90 Stat. 874.

[14]United States v. Wood, 295 F.2d 772, 777-78 (5th Cir. 1961), *cert. denied* 369 U.S. 850 (1962). 7 Moore's Federal Practice § 110.20[5] (1975); Wright & Miller, Federal Practice and Procedure: Civil § 2962, n.96 (1973)

Cf. State of Maine v. Fri, 483 F.2d 439 (1st Cir. 1973) (grant of TRO the day before lapse not appealable); State of Maine v. Fri, 486 F.2d 713 (1st Cir. 1973) (same upheld after several months without deciding the question of lapse in the absence of an allotment).

[15]Generally, as pointed out in Wright & Miller, *supra,* § 2962 at 628:

> It should be noted that § 1292(a)(1) merely permits an interlocutory appeal; a party does not waive any rights by failing to seek immediate review . . . . The only risk that a litigant incurs by waiting to appeal is that the issues involved may become moot.

The case is not moot. Our authority under 28 U.S.C. § 2106 to fashion an appellate remedy in the interest of justice, permits us to consider at this time whether the denial of the TRO was within the discretion of the district court. If we conclude that it was not, § 2106 permits the provision of the relief even at this late date that would have been available on the merits from the court if it had done what should have been done and provided a preservation remedy.

II. Abuse of Discretion

We conclude that it was an abuse of discretion to deny plaintiff a TRO. The motion for the TRO was opposed by government counsel, and the special considerations of restraint supporting denial of an *ex parte* TRO are absent. The familiar factors affecting the grant of preliminary injunctive relief[16] — 1) likelihood of success on the merits, 2) irreparable injury to the plaintiff, 3) burden on the others' interests, and 4) the public interest — all point unequivocally in favor of granting such relief.

Jacksonville presented a strong likelihood of success on the merits, given the prior decision by Judge Parker in *Los Angeles.* Passing of the statutory deadline threatened irreparable injury given Judge Parker's view that recovery was impossible, and the case moot, thereafter. At least, the uncertainty in the law concerning the effect of the expiration of the FAA's authority to obligate established a substantial risk of irreparable harm looming with the passage of June 30. The holding of the *Los Angeles* case, in which there had been no stay, established the FAA's duty to obligate funds, to which the airport sponsors were entitled, conditionally on the outcome of the suit. Only a modest administrative burden would have been involved in requiring the FAA to take this preservative action, a

[16]Virginia Petroleum Jobbers Association v. FPC, 104 U.S. App.D.C. 106, 110, 259 F.2d 921, 925 (1958); A Quaker Action Group v. Hickel, 137 U.S.App.D.C. 176, 187, 421 F.2d 1111, 1116 (1969).

burden devoid of expenditure and of impact on any other sponsor's right to its funds.

Judge Parker relied on two factors in denying the TRO. He found the complaint "too vague" in that it did not specify which of the four projects on which plaintiff had applications pending the $292,187 remaining of Jacksonville's allocation by the enplanement formula was to apply. The FAA informed Jacksonville that all four projects were eligible under the airport development program, but that none would be funded due to the operation of the FAA's priority system. Plaintiff's failure to specify which of the eligible projects was to receive the mandatory federal funding in no way beclouded the case or harmed the FAA. On the contrary, it offered the possibility of framing the TRO to allow the FAA to choose that allocation of the minimum federal funding among the proffered projects that it preferred, as most consonant with the public benefit in its view. The grant under a TRO would have been conditional, with opportunity for clarification or modification.

Judge Parker also relied on an "equitable" consideration which ensued from his finding that "plaintiff has received in discretionary funds from the government over the past five years, more than twice the amount to which it would have been entitled under the mandatory enplanement formula."[17] That statistic is apparently erroneous. The statement of defendants' counsel at the TRO hearing on which it was based went:

> over the five-year period they [Jacksonville] have received almost double their emplanement [sic] entitlement in funds from the trust fund, that is, they have received grants which included emplanement [sic] entitlement monies, and discretionary funds, and state allotments [49 U.S.C. § 1715(a) (1) (a)] almost double of what they could have received over the five-year period if it all came out of the emplanement [sic] formula.[18]

[17] Jacksonville Port Authority v. Coleman, Civ. No. 75-1039, Order (D.D.C. June 27, 1975).

This fact, that it was the total amount Jacksonville had received, discretionary *plus* mandatory, which was twice its enplanement entitlement, was confirmed for us by the government counsel at argument. While this mistake undercuts the "equitable" grounds relied on by the District Court, it is not the dominant consideration in our view of the equities. As we view them, plaintiff's equitable "deservedness" is not material to its entitlement, equitable or legal. This is not a case even remotely within the concept of lack of clean hands, or estoppel, or some conception that Jacksonville is "hogging" funds to the detriment of the public.

As we have developed in the companion case, No. 75-1965, *City of Los Angeles v. Adams,* Congress purposefully chose to divide the available funds: 2/3 mandatory, the other 1/3 to be distributed in the discretion of the FAA. One of the major purposes of the enplanement funds was to facilitate long term planning by sponsors, who would be assured of a minimum allotment based on their present passenger volume. While FAA stresses a public interest in efficiency, there is an overriding public interest both in the particular facet determined by Congress, in the evenhanded distribution of the enplanement funds, and in the general importance of an agency's faithful adherence to its statutory mandate. These public interest considerations complete the factors which militate in favor of preliminary relief. The TRO should have been granted.

The district court may now order the FAA to grant to the plaintiff what it was entitled to under the statutory scheme, including the associated appropriations acts. The case is remanded to the district court for disposition together with No. 75-1965, *City of Los Angeles v. Adams,* decided this day. Plaintiff is to participate and be treated in accordance with our opinion of today in *Los Angeles.*

So ordered.

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITY OF LOS ANGELES, Plaintiff,)
v.)
)
HON. WILLIAM T. COLEMAN, JR. Secretary of Transportation of the United States, et al., Defendants.)

Civil Action No. 75-0679

Filed Jun. 23, 1975

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Before

BARRINGTON D. PARKER
UNITED STATES DISTRICT JUDGE

Decided: June 23, 1975

MEMORANDUM OPINION

The dispute in this case centers around whether or not the plaintiff City of Los Angeles is entitled to $9,585,000 for airport development under the Airport and Airway Development Act of 1970, 49 U.S.C. § 1701 *et seq.* (1970) (the Act). The defendants are the Secretary of Transportation, the Acting Administrator of the Federal Aviation Administration, the Secretary of the Treasury and the Direcdtor of the Office of Management and Budget, who are charged with the responsibility of distributing the funds authorized by the Act. This Court on May 2, 1975, granted a Temporary Restraining Order which prohibited the federal defendants from obligating to anyone other than plaintiff the disputed $9,585,000. On May 14, 1975, while the restraining order was still in effect, the Court entered an order granting a preliminary injunction based on its Findings of Fact and Conclusions of Law, which had the effect of holding the funds intact *pendente lite.*

At issue before the Court is whether plaintiff is entitled to a grant-in-aid in the amount of $9,585,000 which represents the sum which has been apportioned to plaintiff under the Act for fiscal years 1974 and 1975. The plaintiff is basically seeking three types of relief in this lawsuit: (1) a permanent injunction restraining defendants from obligating any portion of the $9,585,000 apportioned to plaintiff under the Act to any airport sponsor other than plaintiff; (2) a declaratory judgment to the effect that the actions of the defendants were in violation of the law; (3) relief in the nature of mandamus by issuance of a writ

*See List of Exhibits Admitted, Appendix A.

commanding defendants to immediately process plaintiff's project application and to obligate prior to June 30, 1975 the funds due plaintiff under the Act. The defendants contend that there are not enough funds available to obligate to all sponsors the amounts which have been apportioned to them under the statute and that therefore a priority system was instituted under which plaintiff would not be able to receive the funds it seeks. By agreement between counsel, the matter was heard on the merits on June 10 and 11, 1975.

The Court has reviewed and considered the testimony, the affidavits, exhibits* and the memoranda and oral arguments of counsel, and concludes that plaintiff should be granted the injunctive, declaratory and mandamus relief requested.

The Statutory Scheme

The Airport and Airway Development Act of 1970 was declared by Congress to be a vehicle for expanding and improving the nation's airport and airway system. 49 U.S.C. § 1701. The preamble of the Act outlines a 10 year program from 1970 to 1980 with an authorization for grants totalling $2,500,000,000. *Id.* The operative sections of the Act, however, provide specific authority for the obligation of funds only until June 30, 1975. 49 U.S.C. § 1714(b). No funds can be obligated after that date unless Congress passes new legislation.

The Federal Aviation Agency (FAA) under the direction of the Secretary of Transportation is in charge of administering airport development funds. An Airport and Airway Trust Fund was established in the United States Treasury, with revenues from various taxes on aviation activities, for the purpose of meeting obligations incurred under the Act. 49 U.S.C § 1742. $193,000,000 in funds authorized to be, but not, obligated in prior fiscal years remain in the Trust Fund at the present time.

The Act specifies certain minimum yearly amounts for airport development projects on a nationwide basis. For

fiscal years 1971-73 the amount was $280,000,000 per year and for fiscal years 1974-75 it was $310,000,000. 49 U.S.C. § 1714(a)(1) and (2). The total amount authorized for each year is to be apportioned by the Secretary in accordance with the following formula:[1] (1) 1/3 to the States on the basis of population and area; (2) 1/3 to sponsors of airports served by air carriers certificated by the Civil Aeronautics Board[2] in the same ratio as the number of passengers enplaned at each airport of the sponsor bears to the total number of passengers enplaned at all such airports (enplanement formula); and (3) 1/3 to be distributed at the discretion of the Secretary. 49 U.S.C. § 1715(a)(1). The amounts apportioned according to the enplanement formula are to remain available to the designated airport sponsors for approved airport development projects for the fiscal year in which apportioned and for the next two fiscal years. After that time, the Secretary of Transportation is given discretion to distribute these funds as he sees fit. 49 U.S.C. § 1715(a)(3).

The Facts

Plaintiff City of Los Angeles is a California municipal corporation which, through its Board of Airport Commissioners, owns and operates the Los Angeles International Airport. Plaintiff's airport is served by air carriers certificated by the Civil Aeronautics Board, and therefore is entitled to have funds apportioned to it under the Act's enplanement formula.

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[1] A different formula applies to a small portion of the total minimum authorization ($30,000,000 for fiscal years 1971 through 1973, and $35,000,000 for fiscal years 1974 and 1975), which are used for airports serving segments of aviation other than air carriers certificated by the Civil Aeronautics Board. The enplanement formula does not apply to these funds. 49 U.S.C. § 1715(a)(2).

[2] There are approximately 468 such airport sponsors to whom funds have been apportioned each year by the Secretary of Transportation and the FAA. The annual apportionment is usually announced in a news letter at the beginning of the fiscal year. It is then up to the individual sponsors to submit applications for the apportioned funds.

On September 5, 1973, the FAA and the Department of Transportation announced the apportionment of the 310 million dollars authorized for fiscal year 1974 under the Act. The share apportioned to the City of Los Angeles was $5,694,301.[3] Similarly, on August 14, 1974, the FAA and the Department of Transportation announced the apportionment to Los Angeles of $5,377,597, its enplanement entitlement for fiscal year 1975.[4] Plaintiff has received grants for airport development of considerably less than the apportioned amounts for fiscal years 1974 and 1975. Plaintiff's remaining apportioned share of funds under the enplanement formula is $9,585,000, a sum acknowledged as accurate by both sides.[5]

Plaintiff City of Los Angeles committed itself to projects involving land acquisition in 1974 and 1975 in reliance on receiving funds under the enplanement formula of the Act. Accordingly, Los Angeles timely and properly applied for a grant under the Act in October of 1974,[6] but was told by FAA officials in March of this year that it would not be approved because no funds were available and that plaintiff's project was of an insufficiently high priority under the FAA's priority system of rating airport projects.

[3]Dep't of Transportation News, No. 73-154, attached summary of apportionment at 4.

[4]Dep't of Transportation News, No.74-124, attached summary of apportionment at 4.

[5]The parties had arrived at slightly different figures for plaintiff's remaining enplanement funds but they agreed in open court that $9,585,000 was a reasonably accurate figure.

[6]Plaintiff's project substantially meets the requirements of project eligibility as required by FAA regulations, with the possible exception of a few minor details, discussed *infra*, at page 18.

FAA's Priority System and the "Limitation" of § 302

Defendants seek to justify their refusal to obligate to Los Angeles its 1974 and 1975 entitlement by claiming that there are insufficient funds available to satisfy all the demands for monies apportioned under the statute. As a result of this shortage, defendants have set up their own "priority system" for approving airport grants, rather than strictly abiding by the mandatory formula set forth in § 1715 of the Act. Three factors are offered to justify the establishment of the "priority system": (1) the yearly limitation of the Appropriations Acts; (2) the duty to spend the full amount authorized each year by § 1714; and (3) the inability of smaller airports to finance average projects on their statutory enplanement funds alone.

Although §§ 1714 and 1715 of the Airport Act set forth minimum yearly enplanement entitlements which are to remain available to airport sponsors for three years, defendants argue that they cannot obligate all of the money authorized by the Act because of § 302 of the Appropriations Act for fiscal year 1975, which reads as follows:

> None of the funds provided in this Act shall be available for administrative expenses in connection with commitments for grants-in-aid for airport development aggregating more than $310,000,000 in fiscal year 1975. Pub. L. 93-391, § 302 (1974).

Defendants have interpreted this language as imposing a ceiling on the amount of money which can be obligated under the Airport Act in any given year,[7] despite the

[7]An equivalent section has appeared in every appropriations act passed during the existence of the Airport and Airway Development Act, with amounts averaging at or near the minimums authorized for that fiscal year in § 1714 of the Act. *See:* Pub. L. 92-75 § 303 (1971) ($280,000,000 for FY 1972); Pub. L. 92-398 § 302 (1972) ($280,000,000 for FY 1973); Pub. L. 93-98 § 302 (1973) ($300,000,000 for FY 1974).

minimum authorizations which were supposed to have accumulated. Indeed, the defendants admit that because less than the full authorizations have been obligated, 193.7 million dollars in enplanement, state and discretionary balances will remain apportioned but unobligated after the June 30, 1975 cut-off date.

The appropriation statute does not limit obligational authority directly, but defendants argue that by prohibiting the expenditure of funds to *administer* grants-in-aid over a certain amount, Congress has indirectly put a ceiling on the amount of money that can be obligated. Since the FAA could not approve a grant without incurring some administrative expenses[8] in connection with reviewing and processing the application, the limit on expenses is in effect a limit on grants. The FAA has been acting in accordance with this interpretation of the appropriation "ceiling" throughout the existence of the Airport Act.[9]

The FAA's use of discretion is also defended as a solution to the "dilemma" posed by the command of § 1714 to obligate "not less than" specific amounts each year, and the provisions of § 1715 that funds are to be apportioned by formula to airport sponsors and states and remain available for three years. Thus, since not every airport sponsor will apply for all of its enplanement money in every year, the FAA claims it must use discretion to approve some projects which use more than one year's enplanement balance, rather than reserving each sponsor's apportionment for the entire year, in order to obey the § 1714 mandate to spend not less than the amount of the current year's authorization.

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[8]Administrative expenses or costs are basically the salareis of agency personnel who review grant applications.

[9]In the first year of the Act, however, the Department of Transportation obligated considerably less than both the minimum statutory amount and the "ceiling" in the Appropriations Act. *See* H.R. Rep. 92-459, 92d Cong., 1st Sess. 3 (1971).

A third basis for the priority system stems from the fact that only a minority of airports could finance an average project out of their enplanement balances alone. Under the priority system, some airports could receive grants which were taken from enplanement, state and discretionary funds, even though other airports have a larger amount of enplanement monies apportioned but unobligated. The enplanement entitlements of all airport sponsors are preserved in the FAA's accounting records, however, and are always debited first when a grant is approved.

This "priority system", necessitated by the FAA's refusal to spend more than the amount specified in the Appropriations Act, resulted in the backlogging of statutory entitlements, with some sponsors receiving grants encompassing up to three years of apportioned funds, whereas other sponsors applying for their current year's apportionment were put off for another year. The criteria used for determining which projects would be funded in a given year were detailed and technical, but apparently no priority was given to airport sponsors who had a definite amount of statutory enplanement money on the books. FAA officials appeared to have a goal of placing under grant all acceptable projects whose sponsors had statutory entitlements pending, but because of the "ceiling" contained in the Appropriations Act, grants were often postponed. There was some speculation that Los Angeles would receive its grant in fiscal 1976 were it not for the prohibition on obligations after June 30, 1975.

Thus, defendants argue, the priority system is the administration's response to the dilemma posed by conflicting Congressional mandates — it is not a frustration of Congressional will, but represents the best efforts of the defendants to carry out the purpose of the Airport and Airway Development Act.

Impoundment Doctrine

Los Angeles contends that the FAA's priority system is a violation of the statute, and that the withholding of plaintiff's enplanement funds is the equivalent of executive impoundment, or refusal to spend, money appropriated by Congress. The series of impoundment cases decided by federal courts in recent years supports the proposition that the administration has no inherent discretionary power to refuse to make grants to persons who are entitled to them by the terms of a mandatory Congressional statute.

State Highway Commission of Missouri v. Volpe, 479 F.2d 1099 (8th Cir. 1973), involved impoundment of funds under the Federal-Aid Highway Act of 1956. In the Highway Act, certain user taxes were set aside in a trust fund, out of which the administration was required to apportion certain amounts authorized for appropriation to the states in accordance with a specific formula. After the amounts were apportioned, states submitted proposed projects based on their apportioned share. The funds were to remain available to the states for a period of three years. In 1966, President Johnson limited the amounts which could be spent on the highway programs for budgetary reasons. The result was that although 115.7 million dollars had been apportioned to the Missouri Highway Commission, 21.9 million dollars of that sum was impounded by the Secretary of Transportation.

The Eighth Circuit held that the Secretary could not withhold approval of state highway projects "for reasons not contemplated within the Act." *Id.* at 1110. The Department of Transportation had no discretion to withhold approval of projects becasuse of its own "system of priorities" which was not in furtherance of the Act.

Train v. City of New York, 95 S.Ct. 839 (1975), is a similar case upholding mandatory expenditure if provided by statute and denying administrative authority to choose not to spend. The *Train* case was concerned with the Federal Water Pollution Control Act Amendments of

1972, which provided for annual sums "authorized to be appropriated" for sewage treatment projects. The yearly sums were to be allotted to the states, and localities would in turn submit applications to the Administrator of the Environmental Protection Agency for grants from the state allotments. In 1972 President Nixon instructed the Administrator *not* to allot the full amounts authorized. This impoundment was found to be in direct contravention of the will of Congress. The statute when read in conjunction with its legislative history, manifested a Congressional intent "to create a procedure which would insure that the total authorized funds would be made available to the states." *City of New York v. Train,* 494 F.2d 1033, 1042 (D.C. Cir. 1974), *aff'd,* 95 S.Ct. 839 (1975). Such Congressional intent was held to prevail over any administrative decision to the contrary.

Finally, in *Pennsylvania v. Weinberger,* 367 F.Supp. 1378 (D.D.C. 1973), Judge Robinson of this Court construed the provisions of Title V of the Elementary and Secondary Education Act of 1965. Under the Education Act, Congress appropriated funds each year, and the Commissioner of Education was required to apportion these funds according to a formula to the states, who would in turn apply for grants up to the amount of their respective apportionments. Pursuant to a related statute, funds appropriated would "remain available for obligation and expenditure until the end of such fiscal year."[10] Judge Robinson interpreted this provision as denying to the administration any authority to refuse to approve a state application for apportioned funds for other than "program-related" reasons. *Id.* at 1382. *See also: Sioux Valley Empire Electric Association, Inc. v. Butz,* 504 F.2d 168 (8th Cir. 1974) (Secretary of Agriculture could not terminate Rural Electrification Act loan program as part of an effort to hold down the overall federal budget);

[10]Section 415 of the General Education Provisions Act, 20 U.S.C. § 1226, quotedin 367 F. Supp. at 1381.

Guadamuz v. Ash, 368 F. Supp. 1233 (D.D.C. 1973) (administration could not terminate or withhold appropriated funds for federal soil conservation and housing rehabilitation subsidy programs for fiscal policy reasons collateral to the purpose of the statutes); *Local 2677, American Federation of Government Employees v. Phillips,* 358 F. Supp. 60 (D.D.C. 1973) (Acting Director did not have authority to halt the OEO program for reasons unrelated to the purposes of the Economic Opportunity Act).

Defendants argue that the impoundment cases are not controlling because the denial of funds to Los Angeles is the result of a priority system designed to carry out the purposes of the Airport and Airway Development Act. Thus, the withholding of funds was for "program-related" reasons, as opposed to the collateral budgetary motives which were involved in the majority of the impoundment cases. Indeed, defendants assert that the administration can terminate an entire program if such action is in harmony with the purposes of the authorizing statute. In support of their position, defendants rely principally on *Pennsylvania v. Lynn,* 501 F.2d 848 (D.C. Cir. 1974). In that case, the Secretary of Housing and Urban Development had suspended certain low income housing programs in order to investigate whether certain abuses in their operation were producing results exactly contrary to the original Congressional purpose in authorizing the federal subsidies. The Court of Appeals noted that the Secretary had suspended the programs for "program-related reasons", rather than because of concerns "such as fiscal policy — extrinsic to the operation of the programs." *Id.* at 852. Thus, the action of the Secretarty was upheld against a challenge by certain organizations who would otherwise have been entitled to federal housing subsidies.

The situation presented in this case, however, is more closely analogous to the *Volpe, Train,* and *Weinberger* cases than to the *Lynn* case. The Airport and Airway Development Act set up a mandatory program for grants-in-aid to airports, with specific yearly amounts to be apportioned to airport sponsors according to a non-discretionary formula. Defendants have refused to obligate to Los Angeles the amount apportioned to it, claiming that § 302 of the Appropriations Act set up a limitation which compelled the Secretary of Transportation to establish the priority system which was used to deny Los Angeles' application for its apportionment. Defendants' withholding of funds is not specifically related to the purpose of the 1970 Act, however, but depends entirely on the defendants' interpretation of § 302 of the annual Appropriations Act. Such an interpretation is a question of law and the administration's theory cannot prevail if the court finds from an examination of the language of the statute and the legislative history that the intent of Congress was to the contrary. *See Bailey v. Romney,* 359 F. Supp. 596, 601 (D.D.C. 1972).

The Intent of Congress

Defendants presented evidence regarding the existence and operation of their "priority system" in the belief that it presented a question of fact. Contrary to the defendants' contentions, however, the Court finds that there is no real dispute as to the existence of the priority system, or the details of its operation. The real issue is whether defendants' established procedures in this regard are in accord with the will of Congress as reflected in the Airport Act and the Appropriations Acts. While the priority system may reveal that the administrative agency has been interpreting the Congressional mandate in a certain restrictive manner for a number of years, such an interpretation is not controlling. The Court must determine for itself the intent of Congress by an independent examination of the pertinent legislative history and the language of the statutes themselves.

1. Legisative History

One important goal of the 1970 Act was the facilitation of long-term planning by airport sponsors. The man-

datory apportionment formula with funds to remain available for three years was intended to remedy the uncertainties of funding which had existed under the Federal Airport Act of 1946.[11] The Senate Report on the 1970 Act stated specifically that the new formula method would avoid some problems of past funding:

> The vagaries of year to year general appropriations coupled with the fact that grant recipients were generally chosen on a year-to-year basis, and could never rely upon any certain level of Federal assistance, in effect, rendered Federal grants under the program less effective than is now necessary. S. Rep. No. 91-565, 91st Cong., 1st Sess. 22 (1969).

The apportionment formula was intended to assure that airport sponsors "will receive a guaranteed level of airport assistance grants each year providing those communities' project applications are approved." *Id.* at 28. The enplanement formula was deemed necessary to make sure that at least one-third of the user taxes in the Trust Fund would be used "in the airport areas of the highest traffic density and where the need is greatest." *Id.*

Thus, FAA's priority system, which would deny Los Angeles the mandatory enplanement funds upon which it had relied, would subvert the primary purpose of the Act's funding mechanism which was to provide minimum levels of assistance so that airport sponsors could make their plans with the assurance that their federal entitlement would be forthcoming.

Another manifestation of Congressional intent to facilitate long-term planning by airport sponsors was the provision of the Act that required apportioned funds to remain available for the airport sponsor for up to three years. 49 U.S.C. § 1715(a)(3). Congress emphasized that the full yearly minimum authorizations were to be spent,

[11] 60 Stat. 170 (1946).

even if not obligated in the year of authorization, so that airport sponsors could rely on the fact that their enplanement funds would be held for them for the three year period provided in the Act, and not be allowed to lapse because the administration refused to spend the minimum authorized amount.

This concern of Congress is illustrated by the legislative history of the 1971 amendments to the Act, which put restrictions on the use of the Trust Fund, limiting it strictly to capital development projects and those expenses necessary to administer the grants. 49 U.S.C. § 1714(e)(3). The impetus for this amendment was the Department of Transportation budget request of less than the minimum authorized amounts in the first year of the Act. Members of Congress were concerned that the Department apparently intended to employ the residual balance of trust fund monies for FAA operational and maintenance expenses, rather than for airport development.[12]

The Congressional reports refer to the retention of tax money in the Trust Fund "until used" for development,[13] to thus "accumulate user revenues to be employed in the capital development program."[14] During floor debate, supporters of the bill spoke of maintaining "the sanctity of the trust fund"[15] which "must be preserved in order to meet the capital requirements of the aviation system."[16] These statements imply that trust fund monies are to remain available for obligation after the original authorization, contrary to the argument of the defendants that the Appropriations Acts limited the Department of Transportation's annual obligational authority to a sum not exceeding the current year's minimum authorization.

[12] S. Rep. 92-378, 92nd Cong., 1st Sess. 4-5 (1971); H.R. Rep. 92-459, 92nd Cong., 1st Sess. 3 (1971).

[13] S. Rep. 92-378, *supra* n. 12 at 3.

[14] *Id.* at 4; H.R. Rep. 92-459, *supra* n. 12.

[15] 117 Cong. Rec. 32733 (1971) (remarks of Representative Jarman).

[16] 117 Cong. Rec. 35729 (1971) (remarks of Senator Pearson).

In opposing the 1971 Amendments, the Department itself argued that since the Act authorizes expenditures over a period of 10 years, it would "speed up" grants in later years to compensate for the shortfall which occurred during the first year of the Act.[17] At a hearing on the amendments, a representative of the Department of Transportation indicated that the "balance of 403 million dollars in the trust fund at the end of fiscal year 1971 . . . will be completely eliminated during fiscal year 1972 as the proper adjustment is made to balance out the 2-year period."[18] These statements were made despite the fact that the Appropriations Act for each year of the existence of the Airport and Airway Development Act had contained almost identical language[19] which the Department now claims precludes them from using trust fund money to fulfill statutory entitlements from prior years.

2. Language of the Statutes

As discussed above,[20] defendants' refusal to obligate to Los Angeles its enplanement entitlement is based on their interpretation of § 302 of the Appropriations Act as a limitation on the amount of money that can be obligated in any given year. If this yearly Appropriations Act is construed to impose a limit on the minimum amounts previously authorized to be obligated, however, then the Appropriations Act would effectively repeal some part of the original statute which authorized a higher level of funding. Courts should not uphold such a repeal by implication if the two statutes can be interpreted in a consistent manner. *United States v. Borden Co.*, 308 U.S. 188, 198-9 (1939).

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[17]S. Rep. 92-378, *supra* n. 12 at 5; H.R. Rep. 92-459, *supra* n. 12 at 4.

[18]Olsson, Deputy Under Secretary of Transportation, quoted in 117 Cong. Rec. 32735 (1971).

[19]*See* note 3, *supra*.

[20]*See* discussion at pages 5-6, *supra*.

The provisions of the Airport and Airway Development Act for mandatory minimum authorizations to remain available for a period of three years can be readily reconciled with § 302 of the Appropriations Act. The language of § 302 limits FAA "administrative expenses" but does not directly purport to put a limitation on the previously established obligational authority. Interpreting § 302 as a limitation on administrative expenses, rather than obligational authority, is also consistent with the purpose expressed in the legislative history of the 1971 amendments to preserve the trust fund for distribution to airport projects and to prevent the FAA from using it to pay for general expenses which were not connected with airport and airway development.

Defendants' interpretation of § 302, on the other hand, would contradict the statutory format providing that the minimum amounts apportioned each year may accumulate for up to three years. Under defendants' interpretation, there would never be enough funds available for all airport sponsors to get their current apportionments plus any backlog that may have accumulated from prior years. Defendants admit that enough money is currently in the Trust Fund with which to obligate to Los Angeles its statutory entitlement. It would thus be illogical for Congress to pass a limitation on yearly obligational authority with the result that some 193 million dollars is left frozen in the Trust Fund with no way for the FAA to distribute it to sponsors who are entitled to the funds under the statute. Furthermore, if Congress had intended to put a limitation on yearly expenditures previously authorized, it could have done so straightforwardly through an amendment, rather than changing the statutory funding scheme through an ambiguous section of an appropriations act. In fact, Congress *increased* obligational authority by amending § 1714 in 1973,[21] which indicates that Congress could likewise have *decreas-*

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[21]Pub. L. No. 93-44 (1973).

ed obligational authority by amendment to the Airport Act.

The obligation power comes from the 1970 Act itself and its amendments increasing the authorized amounts. The Appropriations Act does not alter the obligation power in any way but rather serves to limit FAA administrative expenses. This interpretation resolves the "paradox" which defendants have argued was created by Congerss, and it is also consistent with the clear intent of Congess in establishing annual apportionments of minimum amounts with a three year carryover provision. Thus, FAA now has the power and the duty to obligate to Los Angeles the $9,585,000 to which it is entitled under the Airport and Airway Development Act.

Conclusion

This Court concludes that Los Angeles is entitled to a grant in the amount of the unobligated balance of the funds apportioned to it by the Department of Transportation and the FAA for fiscal years 1974 and 1975. The statute provides for a mandatory formula for distribution of grants-in-aid, and the FAA's priority system is in direct contravention of the controlling legislation. The Appropriations Act is not in conflict with the Airport Act and does not justify the withholding of the enplanement funds to which Los Angeles is entitled.

Although plaintiff's application has *substantially* met the requirements of project eligibility as required by FAA regulations, it became apparent at the June 10th hearing in this matter that no final determination had yet been made of the project's compliance with the National Environmental Policy Act of 1969[22] or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.[23] It appeared to the Court from the testimony, however, that only a few minor details remain-

[22]42 U.S.C. §4321 *et seq.*

[23]84 Stat. 1894 (1971).

ed before Los Angeles would have made a complete submission to the agency. This Court's order in favor of plaintiff Los Angeles is therefore conditional upon compliance with the requirements of the above statutes. The FAA will also be required to review forthwith any submissions of plaintiff Los Angeles so that the funds may be obligated to Los Angeles before June 30, 1975.

It is hereby this *23rd* day of June, 1975

ORDERED that counsel for plaintiff shall submit forthwith an Order consistent with the foregoing Memorandum Opinion.

/s/ Barrington D. Parker
BARRINGTON D. PARKER
United States District Judge

APPENDIX A

List of Exhibits Admitted

Defendants' Exhibits:

A through E – FAA annual reports to Congress for fiscal years 1970 to 1974, mentioning the use of the priority system for airport grants.

F – FAA internal explanation of the priority system.

G – FAA calculations showing the unapportioned enplanement balance designated for Los Angeles.

H – October 10, 1974 notice to Los Angeles that it was eligible to submit an application.

M and M-1 – Department of Transportation and FAA newsletters announcing nationwide apportionments for fiscal years 1974 and 1975.

S and T – Letters from the FAA to Los Angeles in May, 1975, informing Los Angeles of deficiencies in its application with regard to environmental and relocation requirements.

Plaintiff's Exhibits:

1 – Letter from the Environmental Protection Agency to the FAA to the effect that EPA had no objections to the Los Angeles project.

2 – Affidavit of Los Angeles Airport employee and attached documentation showing compliance with the relocation requirements.

3 – Supplement to Los Angeles' environmental impact statement designed to answer the remaining questions of the FAA.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITY OF LOS ANGELES, Plaintiff	)	
v.	)	Civil Action No. 75-0679
HON. WILLIAM T. COLEMAN, Jr. *et al.*, Defendants	)	

Filed Jun. 26, 1975

ORDER

This Court entered its Memorandum Opinion on June 23, 1975 after trial and upon the testimony and exhibits introduced therein, and upon the verified complaint and Plaintiff's and Defendants' affidavits submitted in connection with a Temporary Restraining Order issued by this Court on May 2, 1975 and a Preliminary Injunction issued by this Court on May 14, 1975. That Memorandum Opinion constitutes this Court's Findings of Fact and Conclusions of Law pursuant to Fed. R. Civ. P. 52(a). It appearing to the Court that Plaintiff is entitled, upon the submission of all forms required by Defendants to process an application for a grant under the Airport and Airway Development Act of 1970, 49 U.S.C. §1701 *et seq.* (Act), as a matter of law to a grant of $9,585,000, and it further appearing that Defendants' power to enter into an obligation expires June 30, 1975.

NOW THEREFORE IT IS ORDERED that Defendants, prior to June 30, 1975 enter into an obligation under the Act to pay Plaintiff the amount of $9,585,000, Plaintiff's enplanement entitlement computed according to 49 U.S.C. §1715(a)(1)(B) and already apportioned by Defendants to Plaintiff;

IT IS FURTHER ORDERED that Plaintiff take all steps prior to June 30, 1975 to comply with all requirements of Defendants' regulations under the National Environmental Policy Act of 1969, 42 U.S.C. §4321 *et seq.* (Environmental Act), and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1971) (Relocation Act). If all administrative requirements to the obligation by Defendants of $9,585,000 due Plaintiff have not been completed prior to June 30, 1975 in spite of the good faith attempt of compliance by Plaintiff, Defendants shall nonetheless prior to June 30, 1975 enter into an obligation under the Act to pay Plaintiff $9,585,000, which obligation shall be subject to modification or vacation by this Court prior to the expenditures by Defendants of any monies in liquidation of the obligation, upon showing by Defendants that Plaintiff will be unable to meet the requirements of the Environmental Act and the Relocation Act.

IT IS FURTHER ORDERED that this Order shall constitute documentary evidence of an obligation of the United States pursuant to 31 U.S.C §§200(a)(6), (a)(8), (d).

Dated: June 26, 1975

/s/ Barrington D. Parker
United States District Judge

No. 79-347

In the Supreme Court of the United States

OCTOBER TERM, 1979

CITY OF LOS ANGELES, CALIFORNIA, ET AL., PETITIONERS

v.

NEIL E. GOLDSCHMIDT, SECRETARY OF TRANSPORTATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1979

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CITY OF LOS ANGELES, CALIFORNIA, ET AL., PETITIONERS

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NEIL E. GOLDSCHMIDT, SECRETARY OF TRANSPORTATION, ET AL.

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MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioners contend that the court of appeals incorrectly interpreted its prior mandate to the district court in this case and thus erred in ordering that petitioners be awarded less than the full amount they claimed under the Airport and Airway Development Act of 1970, 49 U.S.C. 1701 *et seq.*

1. Petitioners are three public authorities operating airports that serve carriers certificated by the Civil Aeronautics Board. They brought these suits to establish their entitlement to funds under Sections 1714 and 1715 of the Airport and Airway Development Act of 1970 ("the Act"), 49 U.S.C. 1714, 1715.[1]

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[1]The Airport and Airway Development Act Amendments of 1976, Pub. L. No. 94-353, 90 Stat. 871, substantially altered the 1970 Act. In particular, while the 1976 amendments retained a grant system to aid the development of airports, they adopted both different authorization ceilings and a different apportionment formula for fiscal

Under the Act, the Secretary of Transportation was authorized, for the purpose of aiding the development of airports serving carriers certificated by the CAB, to make grants in aggregate amounts of not less than $250 million for each of the fiscal years 1971 through 1973 and $275 million for each of the fiscal years 1974 and 1975. 49 U.S.C. 1714(a). Pursuant to 49 U.S.C. 1715(a)(1), these funds for airport development were apportioned in the following manner: (1) one-third to the states, in proportion to their population and area, (2) one-third to airports, including petitioners, in proportion to the number of passengers served (the "enplanement formula"), and (3) one-third at the discretion of the Secretary. Funds allotted to airports under the enplanement formula were available for approved airport development projects for the fiscal year in which they were apportioned and for two successive years, and any funds not obligated by grant at the end of that period were automatically transferred to the Secretary's discretionary account under the Act. 49 U.S.C. 1715(a)(5). At the end of the fiscal year 1974, the Secretary had obligated $193.7 million less than the total funds apportioned (Pet. App. 38a).

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years 1976-1980 than had been in effect for fiscal years 1971-1975. See 49 U.S.C. 1714(a)(3), 1715(a)(3). Furthermore, at the time that the Conference Report on the 1976 amendments was pending, Representative Anderson, the chairman of the House subcommittee with jurisdiction over the amendments, stated in the floor debate regarding the 1977 appropriation that any deficiency between the authorization and the appropriation would result in a pro rata reduction in all development grants. See 122 Cong. Rec. 20994 (1976). Thus, although an appropriation shortfall can still occur under the currently effective statute and necessitate a reduction in airport development grants, the issues raised by petitioners concerning the Act in force in fiscal years 1971-1975 are of little continuing general interest.

Notwithstanding the obligation levels authorized in the Act itself, Congress in each of the relevant appropriations acts limited the amount available for airport development grants. For fiscal year 1975, commitments for airport development were limited to $310 million. This was well below the amount authorized under Section 1714(a) of $503.7 million, consisting of the $310 million annual authorization for that year plus the $193.7 million carried over from previous years (Pet. App. 38a).

2. Petitioners claimed in the courts below that, despite the limitations imposed by the appropriations acts, they were still entitled to receive the full share of enplanement funds that had been authorized by Sections 1714(a) and 1715(a)(1)(B).[2] The court of appeals, in its first opinion, rejected this contention, holding that the appropriations measures constituted amendments of the original legislation that "prevented the [Secretary] from making the 'minimum' grants provided by the 1970 Act" (Pet. App. 44a). The court also held that, to comply with the new spending ceilings, the Secretary was required to make a pro rata reduction in the amount of funds available to all categories of grantees for fiscal year 1975 (*id.* at 47a).[3] The court remanded the case to the district court "to determine, in accordance with this opinion, the method of pro rata reduction the [Secretary] should have used in granting enplanement funds * * * [and] then [to] order

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[2]The unobligated balance of money that would have been apportioned to petitioners under the enplanement formula, absent subsequent congressional action, was as follows: (1) $9,585,000 for Los Angeles, (2) $5,024,782 for Dade County, and (3) $292,187 for Jacksonville (Pet. App. 9a, 17a, 25a).

[3]The court rejected the Secretary's contention that, as a result of the amendments, the agency had discretion to disburse funds without regard to the allocation prescribed in Section 1715(a)(1)(B) (Pet. App. 44a-48a).

the [Secretary] to grant to the [petitioners] what [they] would have gotten if the [Secretary] had been using during FY 1975 the method that, in our view, was mandated by Congress" (*id.* at 49a).

On remand the district court concluded that, notwithstanding the new spending ceilings, petitioners were still entitled to receive the full balance of funds authorized by the original legislation (Pet. App. 12a, 20a, 27a). On the government's appeal, the court of appeals ruled that the district court's decision was "inconsistent with the terms of our remand, which clearly contemplated determination of a 'pro rata reduction' " (*id.* at 4a). The court adopted the formula proposed by the Secretary, which called for an across-the-board reduction of 25.5% in funding (*ibid.*; J. A. 62). Since petitioners had already received the $11 million (out of their total claims of $15 million) to which they were entitled under this formula, the court of appeals remanded the case with instructions to enter judgment in favor of the government (Pet. App. 4a).

3. The decision of the court of appeals does not warrant further review. It is well settled that a district court is without authority to depart from the terms of a remand order. See, *e.g.*, *Greater Boston Television Corp.* v. *FCC*, 463 F. 2d 268, 279 (D.C. Cir. 1971). Cf. *Stanton* v. *Stanton*, 429 U.S. 501 (1977). The court of appeals' interpretation of its remand order, and its determination that the district court deviated from its mandate, are entitled to substantial deference.

In any event, the court of appeals correctly rejected (Pet. App. 4a) petitioners' claim to an undiminished entitlement to funds under the Act. In its first opinion, the court of appeals held that the congressional limitation on appropriations for the Airport and Airway Development

Act made it impossible for the Secretary to adhere to the full statutory authorization and that therefore each grant under the Act had to be reduced by a proportionate amount. Petitioners do not challenge the validity of this ruling. Despite the court of appeals' decision, however, the district court concluded on remand that it was unnecessary to reduce petitioners' grants because there were sufficient reserves in the enplanement account at the end of fiscal year 1975 to meet the original authorization of the Act (*id.* at 10a-11a, 18a-19a, 26a). This conclusion was erroneous.

Under the remand order, the district court was required to reduce each grant pro rata in accordance with the method that the Secretary should have followed in fiscal year 1975. Contrary to the reasoning of the district court, the existence of reserves at the end of the year has no bearing on that issue. The grant level for each airport is determined at the beginning of the fiscal year by allotting the total funds available for that year among all eligible airports on the basis of the percentage of passengers enplaned at each airport. 49 U.S.C. 1715(a)(1). This allotment is entirely unaffected by the year-end balance of funds. Moreover, the proportionate reduction in each grant called for by the court of appeals' remand order does not change simply because funds designated for other airports remain unspent at the end of a fiscal year. Such undisbursed funds do not accrue to petitioners' accounts, but rather remain available to the original airports for a two-year period and then revert to the Secretary's discretionary account. 49 U.S.C. 1715(a)(5). Since the district court thus failed to reduce petitioners' grant to reflect the new funding levels established by Congress, the court of appeals correctly concluded that the district court had violated the terms of the remand order.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

OCTOBER 1979

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

79-347

CITY OF LOS ANGELES CALIFORNIA,
DADE COUNTY, FLORIDA, and
JACKSONVILLE PORT AUTHORITY, FLORIDA,
Petitioners,

v.

NEIL E. GOLDSCHMIDT, Secretary
of Transportation, *et al.*,
Respondents.

MOTION FOR LEAVE TO FILE, AND BRIEF AMICUS CURIAE OF AIRPORT OPERATORS COUNCIL INTERNATIONAL IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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THE CASILLAS PRESS, INC.–1717 K Street, N. W.–Washington, D. C.–223-1220

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CITATIONS

Statute:

Regulation:

IN THE

Supreme Court of the United States

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MOTION

The Airport Operators Council International respectfully moves the Court for leave to file the within brief as *amicus curiae* in support of certiorari. Petitioners have consented to the filing of this *amicus* brief. Since this Motion is filed and served simultaneously with the petition, *amici* have not consulted Respondents respecting consent.

STATEMENT OF INTEREST OF THE AMICUS

The Airport Operators Council International, Inc. (AOCI) is the non-profit association of the governmental bodies which own or operate the principal airports in the fifty states, Puerto Rico and the Virgin Islands, and in many countries abroad. AOCI's United States member airports enplane over 90% of the domestic and virtually all of the U.S. international scheduled airline passenger and cargo traffic. AOCI members also operate many reliever and other general aviation airports which supplement the larger airports in their communities and regions.

AOCI submits this brief pursuant to Rule 42 of the Rules of this Court because it believes that this case presents an issue important to the administration of the Airport and Airway Development Act and all other similar grant programs: whether Federal Courts should uncritically permit agencies faced with appropriations limitations to give less-than-maximum-possible fidelity to statutory grant formulas. AOCI, joined by other non-profit organizations representing the interest of local governments, was the original proponent of the enplanement formula involved in this case.

ARGUMENT

Three central concerns which AOCI had in the formulation of the 1970 Airport Act were that it should create a trust fund consisting of receipts from user taxes sufficient to provide a significant level of development funding, that there should be an allocation measure designed to ensure that a significant percentage of such receipts would be returned proportionately to the sponsors which generated them by enplaning passengers, and that each sponsor's long-term project planning should be encouraged and

facilitated by some provision setting aside those funds exclusively for its use for a time certain.[1] The program enacted by Congress met each of these concerns, and authorized the commitment of approximately $1.5 billion in development funds through the end of Fiscal 1975.

Each year, however, appropriations acts limited the overall amount which FAA could grant to an amount considerably less than the sum of the Act's current-year authorizations and carryovers of sponsors' entitlements from previous years. FAA's response to this, which precipitated the instant litigation, was to institute a so-called "priority system." Under that system, FAA made grants only to sponsors whose projects FAA thought important. The enplanement formula – so fundamental to the entire scheme of the Act – was relegated to dead letter status, subsumed by exercise of FAA's discretion.

I

THE DISTRICT COURT'S REMEDY PRESERVED CONGRESS' DIVISION OF AVAILABLE FUNDS EVENLY BY THIRDS

Going into Fiscal 1975, the last year of the first phase of the Act, FAA had $310 million with which to satisfy $503.7 million in enplanement sponsors' and States' entitlements and to make discretionary grants. FAA could have, and properly should have, devised a means by which to ensure that the appropriations-caused shortfall would burden each of the funding categories equally. It could, as the District Court's remedy decision contemplated, have set a funding goal for that year in each category which

---

[1]Congress determined that sponsors should have a total of three years in which to call down funds apportioned to them (in a formal notice at the beginning of each fiscal year) under the enplanement formula. 49 U.S.C. § 1715(a) (3).

would have been directed to accomplishing such an equalization. The Court of Appeals' suggestion that this could only have been done at the end of the year is simply erroneous.

Instead, FAA persisted with its priority system and in so doing indeed exacerbated the disequilibrium between the three accounts. The District Court's remand record, drawn largely from FAA's own statistics, amply supports the finding that some $18 million too little was disbursed on the basis of the enplanement formula in Fiscal 1975.

II

IN LIGHT OF THE FACTS SHOWING HOW AIRPORTS ACTUALLY CLAIMED THEIR ENTITLEMENTS DURING 1975, THE DISTRICT COURT'S REMEDY WOULD HAVE BEEN FAIR AND WORKABLE FOR AIRPORTS OTHER THAN PETITIONERS

The District Court was also correct in its finding that, had FAA made such a proper accommodation between the statute and the appropriations act in 1975, the three litigant sponsors could nevertheless have received the entire balance of their enplanement entitlements without adverse consequence to other airport sponsors. Many sponsors for various reasons[2] did not in fact make application for their accumulated entitlements in 1975 and would not have done so even if the priority system had been replaced by a system of administration during Fiscal 1975

[2]A common reason was sponsors' inability to obtain the necessary local matching funds. The City of Chicago, for example, waived entitlement to some $16,000,000 (more than the total claimed by the three Petitioners here) in enplanement funds for this reason.

which, consistently with the statute, had guaranteed the obligation of some funds for an eligible project.[3]

The Court of Appeals, in remanding, said it lacked full information about the grant claims actually made by airports during 1975.

The District Court, on remand, correctly found that a remedial allocation of $14.9 million to these 3 Petitioners would harm no other airports. The history of the airport aid program has been one of many entitled airports foreswearing their enplanement entitlements.

The record in the District Court (affidavit of Henry Rich, May 7, 1975, ¶ 8) related that $67.9 million of enplanement entitlements of other airports was unclaimed at the time these Petitioners preseved their claims by Court Order.

By June 30, 1975, $67.2 million of this fallow entitlement remained. See App. A hereto.

[3]Under the federal program at issue here, no grants could be made after June 30, 1975. However, without relaxing that terminal provision, Congress has extended the airport grant program, beginning July 1, 1976 and ending September 30, 1980.

In its administration of the current Act, FAA has promulgated a rule, 44 Fed. Reg. 18129 (March 26, 1979), requiring that sponsors which desire the obligation of their enplanement apportionments (current year or carryover) in a given fiscal year must file their applications three months before the end of that year. The object – one which we think reasonable – is that FAA may know whether it can grant amount of funds for projects proposed by other sponsors, and thereby obligate the entirety of monies authorized and appropiated for that year.

III

THE PREMISE ON WHICH THE COURT OF APPEALS REVERSED THE REMEDY WAS FALSE

The Court of Appeals apparently labored under a misconception (Pet., p. 4a), attributable to its departure from the District Court's findings, that the funds apportioned to such sponsors were to be held for them beyond the end of Fiscal 1975. This was not so, and was never understood by anyone in the aviation community to be so. The Act's provision for enplanement carryovers was overridden by the prohibition on the obligation of any funds after June 30, 1975.[4]

AOCI of course made every possible effort to ensure that its member sponsors were apprised of their rights to seek those funds which were available within the Fiscal 1975 appropriations limits. Our many newsletters kept members informed of the progress of the lawsuits brought by Petitioners, and after Los Angeles obtained preliminary relief we circulated a special memorandum (see App. B hereto) advising all those with outstanding enplanement apportionments that their fact situations might be similar to Petitioners' and urging them to consult with their attorneys concerning any appropriate action they might take. Had other sponsors come forward, their entitlements might have been adjudicated. Had all other similarly situated sponsors come forward (with applications showing eligible projects and ability to provide matching money) it might or might not then have been necessary to make proportionate reductions in these grants in order that they all be treated equitably. No other sponsor did so come forward.

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[4] 49 U.S.C. § 1714(b).

The District Court's award of full relief to Petitioners not only harms no other sponsor, but also vindicates the aviation community's common interest in FAA's maximum adherence to the main pillar of the statutory scheme — the enplanement formula — by restoring the Act's three funding accounts to a proper balance. The Court of Appeals' second decision, which appears to predicate the necessity of reductions in Petitioners' grants solely upon the Court's earlier and factually unfounded impression, should be reversed.

CONCLUSION

In order to prevent similar maladministration by FAA in this program (and by other grant programs) to pass without judicial review properly premised on a correctly compiled factual record, this Court should grant the prayed for writ of certiorari.

Respectfully submitted,

Sidney Goldstein
1172 Park Avenue
New York, New York 10028
Attorney for Amicus Curiae

APPENDIX A

Unobligated Balances of Sponsor Enplanement Funds (as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
ALABAMA	City of Anniston	9,828.00
	City of Tuscaloosa	7,605.90
	Colbert and Lauderdale Counties	669.00
	Dothan-Houston County Airport Authority, Inc.	24,056.00
	Huntsville-Madison County Airport Authority	160,778.76
ARIZONA	City of Flagstaff	4,861.00
	City of Prescott	2,702.00
	Yuma County	31,894.00
	Cochise County	1,405.00
	U.S. Bureau of Reclamation	1,971.00
ARKANSAS	Boone County	7,868.87
	City of El Dorado	11,254.00
	City of Fort Smith	31,978.00
	City of Hot Springs	31,362.25
	City of Jonesboro	2,107.00
	Little Rock Municipal Airport Commission	89,483.74
	Texarkana Airport Authority	263.50
CALIFORNIA	City and County of San Francisco	8,962,094.00
	City of Fresno	58,702.10
	City of Los Angeles	505.00
	City of Oakland	412,645.00
	County of Sacramento	17,780.02
	County of Ventura	18,402.00
	Monterey Peninsula Airport District	92,846.11
	Orange County	459,413.00
	Riverside County	546.00
	San Diego Unified Port District	960,468.24
	San Luis Obispo County	4,778.00

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
	Santa Maria Public Airport District	168.00
	Yuba County	2.00
COLORADO	City and County of Alamosa	11,942.00
	City of Grand Junction and County of Mesa	43,765.00
	City of Lamar	633.00
	City of Pueblo	21,600.05
	County of Gunnison	9,560.00
	Durango City La Plata County	8,794.00
	Montrose County	7,954.00
	Pitkin County	32,537.00
FLORIDA	Board of County Commissioners, Broward	12,165.45
	City of Gainesville	32,679.00
	Jacksonville Port Authority	300,487.12
	City of Ocala	5,972.00
	City of Tallahassee	12,590.00
	Hillsborough County Aviation Authority	161,845.00
	Board of County Commissioners, Monroe County	15,853.00
	Palm Beach County Board of County Commissioners	287,226.00
	Titusville-Cocoa Airport Authority	1,002.00
	County of Okloosa, Board of County Commissioners	39,398.00
GEORGIA	City of Albany and Dougherty County	24,759.00
	City of Atlanta	155,476.40
	City of Valdosta	12,750.00
	City of Waycross and Ware County	1,442.00
	Clarke County	3,099.00
	Floyd County	327.00

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
	Glynn County	15,186.00
	City of Columbus and Columbus Airports Commission	266.59
HAWAII	State of Hawaii Department of Transportation	5,026.37
IDAHO	City of Burley	54.00
	City of Hailey	9,512.00
	City of Lewiston and County of Nez Perce	19,005.00
	City of Twin Falls and County of Twin Falls	16,294.00
ILLINOIS	Board of Trustees of the University of Illinois	34,241.00
	City of Chicago	16,812,160.00
	City of Quincy	7,436.00
	Coles County Airport Authority	7,397.00
	Greater Peoria Airport Authority	56,006.07
	Mt. Vernon Airport Authority	1,850.00
	Whiteside County Board of Supervisors	5,600.00
	Vermilion County Airport Authority	11,093.00
INDIANA	City of Kokomo Board of Aviation Commissioners	3,203.00
	Evansville-Vanderburgh Airport Authority	74,283.37
	Monroe County Board of Aviation Commissioners	4,324.00
	Terre Haute Board of Aviation Commissioners	6,464.00
IOWA	City of Clinton	1,112.00
	City of Iowa City	125.00
	City of Sioux City	35,437.00
	City of Waterloo	39,564.00

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
KANSAS	City of Great Bend	4,706.00
	City of Hutchinson	5,889.00
	City of Liberal	5,463.00
	City of Parsons	1,699.00
	Metropolitan Topeka Airport Authority	18,036.62
KENTUCKY	City of Bowling Green and County of Warren	1,450.00
	Kenton County Airport Board	304,487.31
	Louisville and Jefferson County Air Board	81,834.48
LOUISIANA	Airport District #1 of Calcasieu Parish	1,624.00
	City of Monroe	18,012.52
	New Orleans Aviation Board and the City of New Orleans	808,436.49
	City of Baton Rouge and Parish of East Baton Rouge	65,265.00
	City of Leesville	18,715.00
MAINE	City of Bangor	53,572.00
	Knox County Commissioners	5,861.00
	Hancock County	6,357.00
MARYLAND	Salisbury-Wicomico County Airport Commission	12,714.00
MASSACHU-SETTS	Massachusetts Port Authority	2,877,401.00
MICHIGAN	Cities of Benton Harbor and St. Joseph	12,076.00
	Cities of Saginaw and Midland and County of Bay	75,628.00
	City of Battle Creek	57,149.00
	City of Detroit	64,905.00
	County of Delta	7,685.00

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
	City of Flint	45,602.00
	County of Dickinson	5,687.00
	County of Emmet	12,111.00
	County of Gogebic	4,049.00
	County of Houghton	23,503.00
	County of Kent	128,300.00
	City and County of Manistee	1,728.00
	County of Menominee	3,591.00
	County of Muskegon	30,365.00
	Capital Regional Airport Authority	143,142.00
MINNESOTA	City of Brainerd and County of Crow Wing	4,117.00
	City of Duluth	143,932.00
	City of Fairmont	1,498.00
	City of Thief River Falls	4,426.00
	City of Winona	2,908.00
	Minneapolis-St. Paul Metropolitan Airports Commission	2,207,873.87
MISSISSIPPI	Board of Supervisors Adams County	1,418.00
	City of Greenville	11,847.00
	City of Greenwood and Board of Supervisors Leflore County	2,349.00
	City of Gulfport	73,970.97
	City of Laurel	320.89
	City of Meridian	33,798.00
	City of Tupelo	5,407.00
	City of Vicksburg	181.00
	University of Mississippi	857.00
	Jackson County	729.00
MISSOURI	City of Columbia	9,309.00
	City of Joplin	46,102.00
	City of Kansas City	2,697,451.64

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
	City of St. Joseph	511.00
	City of St. Louis	3,372,928.00
	City of Tribune	32,109.00
	Missouri State Park Board	2,849.00
MONTANA	City of Billings	96,382.00
	City of Glasgow and Valley County	958.00
	City of Great Falls	63,228.41
	City of Lewiston-Fergus County	419.00
	City of Wolf Point and County of Roosevelt	402.00
	Flathead County	3,469.08
	Helena and Lewis and Clark County	12,649.00
NEBRASKA	City of Chadron	1,587.00
	City of Sidney	645.00
	Norfolk Airport Authority	2,014.00
	North Platte Airport Authority	6,516.87
NEVADA	City of Elko	12,169.00
	Clark County	793,723.00
	Douglas County	5.00
NEW HAMPSHIRE	City of Lebanon and Lebanon Regional Airport Authority	16,697.15
	City of Berlin	247.00
	City of Laconia and Laconia Airport Authority	1,733.00
	Town of Whitefield	197.00
NEW JERSEY	City of Atlantic City	45,369.00
NEW MEXICO	City of Albuquerque	339,670.00
	County and City of Santa Fe	306.00

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
	Grant County	5,799.00
	City of Farmington	12,476.00
NEW YORK	City of Olean	64.00
	City of Syracuse	181,667.00
	County of Monroe	2,476.40
	Dutchess County	24,256.00
	Port Authority of New York and New Jersey	9,033,286.90
	Town of Harrietstown	1,809.00
	Town of Islip	130,349.00
	Town of Messena	4,587.00
NORTH CAROLINA	Cities of Raleigh and Durham, Counties of Durham and Wake, and Raleigh-Durham Airport Authority	272,072.00
	City of Asheville	66,399.00
	City of Elizabeth City	1,099.00
	City of Fayetteville	157,456.00
	Forsyth County	61,969.00
	Moore County Board of Commissioners	788.00
	Onslow County	17,646.00
	City of Goldsboro	10,007.00
NORTH DAKOTA	City of Fargo, North Dakota Municipal Airport Authority	736.25
	City of Grand Forks	31,278.00
	City of Minot	23,228.00
OHIO	City of Cleveland	630,777.00
	City of Columbus	818,167.00
	City of Dayton	57,102.00
	City of Zanesville	17.00
	Scioto County	88.00
	Allen County	743.00

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
OKLAHOMA	City of Bartlesville	1,691.00
	City of Duncan	1,149.00
	City of Muskogee	1,688.00
	City of Oklahoma City	6,274.14
OREGON	City of Baker	312.00
	City of Corvallis	1,190.00
	City of Klamath Falls	22,571.00
	Jackson County	37,084.00
	City of North Bend	20,942.00
	City of Ontario	163.00
	City of Salem	4,275.00
	Port of Astoria	1,285.00
PENNSYLVANIA	Bradford Regional Airport Authority	11,774.00
	County Commissioners, Luzerne and Lackawanna Counties	163,876.00
	Dubois Municipal Airport Authority	5,174.00
	Johnstown-Cambria County Airport Authority	29,276.70
	Lancaster Airport Authority	30,538.00
	Lehigh-Northampton Airport Authority	91,203.00
	Reading Municipal Airport Authority	32,959.00
	Williamsport Municipal Airport Authority	34,181.00
	City of Hazleton	5,298.00
PUERTO RICO	Puerto Rico Ports Authority	2,665,912.00
RHODE ISLAND	State of Rhode Island	208,697.00

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
SOUTH CAROLINA	City of Charleston and Charleston County Aviation Authority	456,836.00
	City of Florence and Florence County	9,500.00
	County of Anderson	4,624.00
	Greenville Spartanburg Airport Commission	20,938.00
	Greenwood County	1,439.00
SOUTH DAKOTA	City of Aberdeen	10,445.58
	City of Brookings	838.00
	City of Rapid City	52,650.00
	City of Sioux Falls	159,833.03
	City of Yankton	1,811.00
TENNESSEE	City of Chattanooga	104,030.00
	City of Memphis and Memphis-Shelby County Airport Authority	65,627.00
	City of Shelbyville	2,048.00
	Metropolitan Government of Nashville and Davidson County Tennessee and Metropolitan Nashville Airport Authority	527,011.87
TEXAS	Angelina County	2,134.00
	City of Amarillo	244,778.00
	City of Austin	382,637.16
	City of Brownsville	32,225.87
	City of Brownwood	3,223.00
	City of Corpus Christi	224,659.00
	City of Dallas	2,825,965.00
	City of El Paso	711,952.00
	City of Galveston	5,547.00
	City of Laredo	24,282.00

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
	City of San Angelo	6,976.00
	City of Temple	6,471.00
	City of Victoria	6,327.00
	Gregg County	4,752.00
	Hutchinson County	1.00
	Texas A&M University	12,999.00
	City of Dallas, City of Ft. Worth, and the Dallas Ft. Worth Regional Airport Board	68.00
	City of Wichita Falls	29,827.00
UTAH	Vernal City and Uintah County	5,794.00
VIRGINIA	City of Danville	5,552.00
	City of Lynchburg	26,227.00
	Norfolk Port and Industrial Authority	767,763.00
	Capital Region Airport Commission	314,128.00
	City of Roanoke	163,347.00
	New River Valley Airport Commission	762.00
WASHINGTON	Port of Chelan County and Port of Douglas County	2,647.00
	Port of Grays Harbor	1,772.00
	Port of Pasco	30,341.00
	City of Walla Walla and County of Walla Walla	17,420.00
WEST VIRGINIA	City of Martinsburg	675.00
	Elkins-Randolph County Airport Authority	3,567.00
	Ohio County Board of Commissioners	31.00
	Tri-State Airport Authority	28,456.00
	Greenbrier Valley Airport Authority and County Court of Greenbrier County	8,846.60

Unobligated Balances of Sponsor Enplanement Funds
(as of June 30, 1975)

State	Sponsor	Unobligated Enplanement Funds
WISCONSIN	City and County of Manitowoc	7,292.00
	City of Eau Claire	10,490.00
	County of Dane	107,855.00
	County of Milwaukee	25,114.90
	Town of Land O'Lakes	102.00
WYOMING	City of Cheyenne	12,402.00
	City of Cody	2,889.00
	City of Laramie and County of Albany	4,108.00
	City of Rock Springs and County of Sweetwater	8,589.00
	City of Worland	2,053.00
	Sheridan County	5,644.00
	Town of Jackson and County of Teton	32,751.00
	GRAND TOTAL	67,203,186.21

APPENDIX B

AIRPORT OPERATORS COUNCIL INTERNATIONAL

May 16, 1975

TO: Selected AOCI Official Representatives

SUBJECT: PRESERVATION OF ADAP APPORTIONMENT MONIES FOR YOUR AIRPORT

Gentlemen:

As earlier reported (Airport HIGHLIGHTS, May 12), the City of Los Angeles petitioned the Federal District Court for an injunction to prohibit the U.S. Department of Transportation from obligating to any other airport sponsor the ADAP grant authority apportioned to Los Angeles under the Airport and Airway Development Act provision which guarantees one-third of funds to sponsors based on their passenger enplanement shares. The City claimed that the FAA and DOT were illegally using discretion and judgment in deciding where to obligate these funds. The City was successful in obtaining a Temporary Restraining Order and on May 15 obtained a preliminary injunction which allows the federal government to obligate all but 9.5 million dollars — that amount to which Los Angeles claims it is entitled. A copy of the opinion and order is enclosed for your information.

AOCI has determined that there are other eligible airport sponsors whose enplanement apportionment has not yet been obligated by FAA, and whose fact situation may be similar to that of Los Angeles. FAA has estimated that the amount of unobligated enplanement funds for your organization is _____.

Sponsors are advised to consult with legal counsel to determine what actions, if any, may be appropriate for your organization to take.

As usual, the staff of AOCI stands ready to assist in any way possible. For further information, contact Milford Coor.

Thank you.

Sincerely,

J. Donald Reilly
Executive Vice President

Enclosure

International Headquaters: 1700 K Street, Northwest, Washington, D.C. 20006
Phone: (202) 296-3270 Cable: AOCIHO